Supreme Court, U.S.
FILED
FEB 28 2006
OFFICE OF THE CLERK

No. 05-7053

IN THE

Supreme Court of the United States

KESHIA CHERIE ASHFORD DIXON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

JOINT APPENDIX

J. CRAIG JETT*
1601 Elm Street
Suite 2000
Dallas, Texas 75201
(214) 871-7676

JEFFREY T. GREEN
KATRICE L. BRIDGES
CYTHERIA D. JERNIGAN
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
(202) 736-8000

Counsel for Petitioner

PAUL D. CLEMENT*
ALICE S. FISHER
JOHN-ALEX ROMANO
OFFICE OF THE SOLICITOR GENERAL
DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Room 5614
Washington, D.C. 20530-0001
(202) 514-2217

Counsel for Respondents

* Counsel of Record

February 27, 2006

PETITION FOR CERTIORARI FILED OCTOBER 17, 2005
CERTIORARI GRANTED JANUARY 13, 2006

TABLE OF CONTENTS

	Page
United States District Court, Northern District of Texas, Relevant Docket Entries	1
United States Court of Appeals, Fifth Circuit, Docket Entries	6
Indictment, *United States* v. *Dixon*, No. 3:03-cr-00055-ALL (N.D. Tex. filed Mar. 5, 2003)	13
Letter from J. Craig Jett, Counsel for Defense, to Candina S. Heath, Assistant United States Attorney (Aug. 6, 2003) (notice of duress defense) (filed Oct. 24, 2003)	18
Defendant's Requested Jury Instructions, *United States* v. *Dixon*, No. 3:03-cr-00055-ALL (N.D. Tex. filed Aug. 11, 2003)	43
Letter from Jane J. Boyle, United States Attorney, to J. Craig Jett, Counsel for Defense (Nov. 13, 2003) (Def.'s Ex. No. 6)	58
Excerpts of Trial Transcripts, *United States* v. *Dixon*, No. 3:03-cr-00055-ALL (N.D. Tex. Nov. 17-19, 2003)	60
United States v. *Dixon*, No. 3:03-cr-00055-ALL (N.D. Tex. Nov. 20, 2003) (charge to jury)	304
United States v. *Dixon*, No. 3:03-cr-00055-ALL (N.D. Tex. Nov. 20, 2003) (jury verdict form)	316
United States v. *Dixon*, No. 3:03-cr-00055-ALL (N.D. Tex. Feb. 23, 2004) (judgment)	318

TABLE OF CONTENTS—continued

Page

United States v. *Dixon*, 413 F.3d 520 (5th Cir. 2005)..... 325

NOTICE

The following document has been omitted in the printing of this Joint Appendix. They may be found in the Petitioner's Appendix to the 05-7053 Petition For A Writ Of Certiorari.

United States v. *Dixon*, No. 04-10250 (5th Cir. July 20, 2005) (order denying pet. for reh'g en banc)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

USA,

Plaintiff,

v.

DIXON,

Defendant.

No. 3:03-mj-0024

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
		* * * *
3/5/2003	11	INDICTMENT as to Keshia Cherie Dixon (1) count(s) 1, 2-9. (lmr,) (Entered: 3/6/2003)
		* * * *
3/19/2003	13	Minute Entry for proceedings held before Judge Jorge A Solis: Arraignment as to Keshia Cherie Dixon (1) Count 1, 2-9 held on 3/19/2003., Plea entered by Keshia Cherie Dixon (1) Count 1, 2-9 by Keshia Cherie Dixon: Not Guilty on counts 1-9. (Court Reporter Pam Wilson.) (jrb,) (Entered: 3/20/2003)
		* * * *
8/11/2003	62	Requested Jury Instructions by Keshia Cherie Dixon. (attachments not imaged) (lmr,) (Entered: 8/12/2003)

DATE	NO.	PROCEEDINGS
8/11/2003	63	MOTION for Continuance (of trial) by USA as to Keshia Cherie Dixon (lmr,) (Entered: 8/12/2003)
		* * * *
8/19/2003	75	ORDER granting [63] Motion to Continue as to Keshia Cherie Dixon (1). The Court will issue a separate order setting the case from trial and final pretrial conference. (see order for specifics) (Signed by Judge Jorge A Solis on 08/19/03) (lmr,) (Entered: 8/20/2003)
8/22/2003	76	ORDER RESCHEDULING TRIAL as to Keshia Cherie Dixon : Jury Trial set for 11/17/2003 08:45 AM before Jorge A Solis. Pretrial Conference set for 11/5/2003 03:00 PM before Jorge A Solis. The defendant need not be present for the pretrial conference. (Signed by Judge Jorge A Solis on 08/19/03) (lmr,) (Entered: 8/21/2003)
		* * * *
10/24/2003	80	Sealed Document (svc,) (Entered: 10/27/2003)
10/24/2003	81	MOTION for Compulsory Examination By Government Expert by USA as to Keshia Cherie Dixon. (lmr,) (Entered: 10/27/2003)
		* * * *
10/29/2003	83	APPLICATION FOR WRIT OF HABEAS CORPUS, ORDER, AND WRIT ISSUED as to Thomas Wright Jr to Appear on November 17, 2003 at 9:00 am for testimony in the trial. Issued Writ of Habeas Corpus

DATE	NO.	PROCEEDINGS
		Ad Testificandum. (see order for specifics) (Signed by Judge Jorge A Solis on 10/29/03) (lmr,) (Entered: 10/30/2003)
10/29/2003	84	APPLICATION FOR WRIT OF HABEAS CORPUS, ORDER, AND WRIT ISSUED as to Tyshon Deon Hillary to Appear on November 17, 2003 at 9:00am for testimony in trial. Issued Writ of Habeas Corpus Ad Testificandum. (Signed by Judge Jorge A Solis on 10/28/03) (lmr,) (Entered: 10/30/2003)
10/30/2003	86	RESPONSE and Objections to Government's [81] MOTION for Compulsory Examination By Government Expert by Keshia Cherie Dixon. (lmr,) (Entered: 10/31/2003)
11/10/2003	87	ORDER granting [81] Motion for Compulsory Examination By Government Expert as to Keshia Cherie Dixon (1). It is ordered that Keshia Cherie Ashford Dixon submit to a psychiatric examination by the government's expert, Dr. Richard Coons. Failure of defendnat Keshia Dixon to submit to an examination by Dr. Coons may result in the exclusion of any testimony from Defendant's expert, Dr. Toby Myers. Ms. Dixon is directed to submit to an examination by Dr. Coons as set forth above before the start of of her trial on November 17, 2003. (see order for specifics) (Signed by Judge Jorge A Solis on 11/10/03) (lmr.) (Entered: 11/12/2003)

DATE	NO.	PROCEEDINGS
		* * * *
11/12/2003	92	Minute Entry for Pretrial Conference held before Judge Jorge A Solis: as to Keshia Cherie Dixon held on 11/12/03. (Court Reporter Linda Robbins.) (svc,) (Entered: 11/14/2003)
		* * * *
11/17/2003	96	Minute Entry for proceedings held before Judge Jorge A Solis: Jury Trial as to Keshia Cherie Dixon held on 11/17/03., Voir Dire begun on 11/17/2003 as to Keshia Cherie Dixon (1) on Count 1, 2-9. (Court Reporter Shawn McRoberts.) (lmr,) (Entered: 11/24/2003)
11/17/2003	97	Minute Entry for proceedings held before Judge Jorge A Solis: Day 2 of Jury Trial as to Keshia Cherie Dixon held on 11/18/03. (Court Reporter Shawn McRoberts.) (lmr,) (Entered: 11/24/2003)
		* * * *
11/19/2003	98	Minute Entry for proceedings held before Judge Jorge A Solis: Day 3 of Jury Trial as to Keshia Cherie Dixon held on 11/19/03. (Court Reporter Shawn McRoberts.) (lmr,) (Entered: 11/24/2003)
11/20/2003	99	Minute Entry for proceedings held before Judge Jorge A Solis: Day 4 of Jury Trial as to Keshia Cherie Dixon held on 11/20/03. (Court Reporter Shawn McRoberts.) (lmr,) (Entered: 11/24/2003)

DATE	NO.	PROCEEDINGS
11/20/2003	101	Jury Charge as to Keshia Cherie Dixon. Signed by Judge Jorge A Solis on 11/20/03. (lmr,) (Entered: 11/24/2003)
11/20/2003	102	JURY VERDICT FORM as to Keshia Cherie Dixon (1) Guilty on Count 1, 2-9. (lmr,) (Entered: 11/24/2003)
		* * * *
2/18/2004	112	Minute Entry for proceedings held before Judge Jorge A Solis: Sentencing held on 2/18/2004 for Keshia Cherie Dixon (1), Count(s) 1, 2-9, Defendant committed to BOP for a term of 34 months; S/R 3 years; SA $900.00. (Court Reporter Pam Wilson.) (lmr,) (Entered: 2/19/2004)
2/23/2004	113	JUDGMENT as to Keshia Cherie Dixon (1). Count(s) 1, 2-9. Defendant committed to BOP for a term of 34 months; S/R 3 years; SA $900.00. This sentence is to be served consecutively to the sentence imposed in Case No. 3:01cr385-P(2). Defendant is to given credit for time served after the completion of sentence in Case No. 3:01cr385-P(2). (see judgment for specifics) (Signed by Judge Jorge A Solis on 02/23/04) (lmr,) (Entered: 2/25/2004)
2/27/2004	114	NOTICE OF APPEAL by Keshia Cherie Dixon re [113] Judgment. No fee pd/TOOC (svc,) (Entered: 3/1/2004)
		* * * *

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

04-10250

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

KESHIA CHERIE ASHFORD DIXON,
Defendant-Appellant.

DOCKET ENTRIES

DATE	PROCEEDINGS
3/4/04	Direct criminal case docketed. NOA filed by Appellant Keshia Cherie Ashford Dixon. [04-10250] (trm)
3/15/04	Appearance form filed by Susan B Cowger for Appellee USA. [04-10250] (trm)
3/16/04	Appearance form filed by J Craig Jett for Appellant Keshia Cherie Ashford Dixon. [04-10250] (trm)
3/19/04	3 transcript orders received from Appellant Keshia Cherie Ashford Dixon for Court Reporter Pamela J Wilson, Court Reporter Shawn McRoberts, Court Reporter Linda J Robbins Date of Hearing: 2/18/04 (Sentencing) - Pamela J Wilson; 8/7/03 (Pretrial Conference) and 11/17/03 - 11/20/03 (Trial) - Shawn McRoberts; 11/12/03 (Pretrial Conference) - Linda J Robbins. [04-10250] Transcript Order ddl satisfied. Ct. Reporter Acknowledgment due on 4/5/04 for Linda J Robbins, for Shawn McRoberts, for Pamela J Wilson. (mfn)

DATE	PROCEEDINGS
3/24/04	Criminal Justice Act 20 voucher issued to J Craig Jett for Appellant Keshia Cherie Ashford Dixon . [04-10250] (jar)
4/5/04	Transcript order acknowledgment received from Court Reporter Shawn McRoberts. Estimated pages: 500 Date Financial Arrangements Made: 3/12/04 [04-10250] Ct. Reporter Acknowledgment ddl satisfied. Transcript due on 5/11/04 for Shawn McRoberts. Ct. Reporter Discount Date is 5/11/04 for Shawn McRoberts. (mfn)
4/9/04	Transcript order acknowledgment received from Court Reporter Linda J Robbins. Estimated pages: 60 Date Financial Arrangements Made: 4/1/04 [04-10250] Ct. Reporter Acknowledgment ddl satisfied. Transcript due on 5/3/04 for Linda J Robbins. Ct. Reporter Discount Date is 6/1/04 for Linda J Robbins. (mfn)
4/13/04	Transcript filed in district court by Court Reporter Pamela J Wilson on 4/9/04. [04-10250] Ct. Reporter Acknowledgment ddl canceled. (cvt)
6/7/04	Transcript filed in district court by Court Reporter Shawn McRoberts on 5/26/04. [04-10250] Transcript ddl satisfied. Ct. Reporter Discount Date canceled. (mfn)
6/24/04	Transcript filed in district court by Court Reporter Linda J Robbins on 6/18/04. [04-10250] Transcript ddl satisfied. Ct. Reporter Discount Date canceled. ROA due on 7/6/04. (mfn)
6/29/04	Record on appeal filed. Vol(s) of Pleadings: 2 Vol(s) of Transcripts: 7 SEALED: 1 env (PSI). [04-10250] ROA ddl satisfied. (jca)

DATE	PROCEEDINGS
7/6/04	Briefing notice issued. [04-10250] A/Pet's Brief due on 8/16/04 for Keshia Cherie Ashford Dixon. (jca)
7/6/04	Record on appeal released to attorney J Craig Jett for Appellant Keshia Cherie Ashford Dixon. Volumes: 9. [04-10250] (jca)
8/12/04	Extension granted by phone until: 9/15/04 to file appellant's brief for Appellant Keshia Cherie Ashford Dixon. [04-10250] (ksw)
8/16/04	Confirmation letter filed by Appellant Keshia Cherie Ashford Dixon confirming an extension of time to and including 9/15/04 for filing appellant's brief. Sufficient [Y/N]: y [04-10250] A/Pet's Brief ddl updated to 9/15/04 for Keshia Cherie Ashford Dixon. (trm)
9/13/04	Supplemental record on appeal filed. Supplement #: 1 Vol(s) of Pleadings: 1 [04-10250] (ddv)
9/17/04	Record on appeal released to attorney J Craig Jett for Appellant Keshia Cherie Ashford Dixon. Supplemental Volumes: 1. [04-10250] (ddv)
9/20/04	Supplemental record on appeal filed. Supplement #: 2 Vol(s) of Pleadings: 1 [04-10250] (tdb)
9/20/04	Record excerpts filed by Appellant Keshia Cherie Ashford Dixon # of copies: 4 Sufficient [Y/N]: Y. [04-10250] (wdc)
9/20/04	Unopposed motion filed by Appellant Keshia Cherie Ashford Dixon to file brief in excess of the word count limitation but not to exceed 15,495 words. [4958837-1] Date of COS: 9/15/04 Sufficient [Y/N]: y [04-10250] (rff)

DATE	PROCEEDINGS
9/20/04	Appellant's Brief filed by Appellant Keshia Cherie Ashford Dixon. Copies of Brief: 7 # of pages: 61 Word count: 15,495 Date of COS: 9/15/04 Hand Delivered [Y/N]: n Disk Provided [Y/N]: y Sufficient [Y/N]: n EXCEEDS WORD & PAGE COUNT LIMITATION (MOTION PENDING). [4960823-1] [04-10250] A/Pet's Brief ddl satisfied. Sufficient Brief due on 10/12/04 for Keshia Cherie Ashford Dixon. (jca)
9/23/04	Appearance form filed by Renee Harris Toliver for Appellee USA. [04-10250] (trm)
9/23/04	The attorney Susan B Cowger for USA not participating in case. [04-10250] (trm)
9/28/04	Record on appeal forwarded by J Craig Jett for Appellant Keshia Cherie Ashford Dixon to Renee Harris Toliver for Appellee USA . Supplemental Volumes: 1 [04 10250] (trm)
10/1/04	CLERK Order filed granting Appellant's unopposed motion to file brief in excess of the word count limitation [4958837-1] Copies to all counsel. [04-10250] (trm)
10/1/04	Brief made sufficient by Appellant Keshia Cherie Ashford Dixon Replacement Disk Provided [Y/N]: n [04-10250] Sufficient Brief ddl satisfied. E/Res's Brief ddl updated to 11/1/04 for USA. (trm)
11/1/04	The attorney Candina S Heath for USA not participating in case. [04-10250] (tdb)
11/1/04	Appellee's Brief filed by Appellee USA. Copies of Brief: 7 # of pages: 29 Date of COS: 10/29/04 Hand Delivered [Y/N]: N Disk Provided [Y/N]:

DATE	PROCEEDINGS
	Y Sufficient [Y/N]: Y. [4987871-1] [04-10250] E/Res's Brief ddl satisfied. Reply Brief due on 11/15/04 for Keshia Cherie Ashford Dixon. (tdb)
11/1/04	Record on appeal requested from Renee Harris Toliver for Appellee USA, Appellee USA. [04-10250] Miscellaneous due on 11/12/04 for USA. (tdb)
11/1/04	Record on appeal returned to 5CCA. Volumes: 9 Supplemental Volumes: 1 [04-10250] Miscellaneous ddl satisfied. (trm)
11/17/04	Unopposed motion filed by Appellant Keshia Cherie Ashford Dixon to file brief in excess of the word count limitation but not to exceed 7,355 words. [5002555-1] Date of COS: 11/15/04 Sufficient [Y/N]: y [04-10250] (rff)
11/17/04	CLERK Order filed granting appellant's unopposed motion to file reply brief in excess of the word count limitation but not to exceed 7,355 words. [5002555-1] Copies to all counsel. [04-10250] (cvt)
11/17/04	Reply brief filed by Appellant Keshia Cherie Ashford Dixon. Copies of Brief: 8 # of pages: 32 Word count: 7,355 Date of COS: 11/15/04 Disk Provided [Y/N]: y Sufficient [Y/N]: n NEEDS NEW DISK (PARTS OF THE BRIEF ARE MISSING FROM THE DISK). [5004341-1] [04-10250] Reply Brief ddl satisfied. Sufficient Brief due on 11/29/04 for Keshia Cherie Ashford Dixon. (ddv)

DATE	PROCEEDINGS
11/24/04	Brief made sufficient by Appellant Keshia Cherie Ashford Dixon Replacement Disk Provided [Y/N]: y [04-10250] Sufficient Brief ddl satisfied. (ddv)
12/21/04	Case tentatively calendared for oral argument Week of: 03/07/05. [04-10250] (gam)
1/21/05	Case calendared for oral argument. [04-10250] (pft)
3/2/05	Supplemental authorities (FRAP 28(j)) filed by Appellant Keshia Cherie Ashford Dixon. [5093976-1] [04-10250] (pft)
3/8/05	Oral argument heard. Case argued by J Craig Jett for Appellant Keshia Cherie Ashford Dixon, Renee Harris Toliver for Appellee USA, Appellee USA [04-10250] (tws)
6/20/05	Opinion filed. Issd in T form? y Mandate pull date is 7/11/05. [04-10250] (jma)
6/20/05	Judgment entered and filed. [04-10250] (jma)
7/5/05	Petition filed by Appellant Keshia Cherie Ashford Dixon for rehearing en banc. # of copies filed: 20 [5216955-1] Mandate pull date canceled. Date of COS: 7/5/05 Sufficient [Y/N] : Y [04-10250] (dg)
7/20/05	COURT Order filed denying appellant's petition for rehearing en banc [5216955-1] With poll (Y/N)?: N Mandate pull date is 7/27/05. Copies to all counsel. [04-10250] (lcb)
7/28/05	Mandate issued. Approved BOC Issued (Y/N)?: n [04-10250] Mandate pull date satisfied. (rfp)

DATE	PROCEEDINGS
8/1/05	Record on appeal returned to 5CCA. Volumes: 9 Supplemental Volumes: 2 SEALED: 1 env [04-10250] Case Management ddl satisfied. (dg)
8/1/05	Record on appeal returned to USDC. Volumes: 9 Supplemental Volumes: 2 SEALED: 1 env. [04-10250] (dg)
10/26/05	Supreme Court notice that petition for certiorari was filed on 10/17/05 by Appellant Keshia Cherie Ashford Dixon. Supct No.: 05-7053 [04-10250] (cav)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed Mar. 5, 2003]

CRIMINAL NO.

UNITED STATES OF AMERICA

vs.

KESHIA CHERIE ASHFORD DIXON

The Grand Jury charges

COUNT 1

Acquisition of Gun While Under Indictment
(Violation of 18 U.S.C. § 922(n))

On or about the following dates in January 2003, in the Dallas Division of the Northern District of Texas, *Keshia Cherie Ashford Dixon*, defendant, while under indictment for a crime punishable by imprisonment for a term exceeding one year, did receive the firearms described below,

DATE	FIREARM	SERIAL NUMBER	DEALER/ SHOW LOCATION
01/04/03	Hi-Point, CF, .380 caliber pistol	P773713	Texas Star Gun Sales Dallas Market Hall
01/04/03	Hi-Point, CF, .380 caliber pistol	P773715	Texas Star Gun Sales Dallas Market Hall
01/04/03	Intratec, Tec-22, .22 caliber pistol	025815	Silent Inovations Dallas Market Hall

01/11/03	Jennings, 9, 9mm pistol	1537984	Graves Guns Big Town in Mesquite
01/11/03	Masterpiece Arms, MPA10, pistol	AO984	Graves Guns Big Town in Mesquite
01/11/03	Masterpiece Arms, MPA10, .45 caliber pistol	AO981	K K Sales Big Town in Mesquite
01/11/03	Hi-Point, 995CN, 9mm carbine rifle	B52203	K K Sales Big Town in Mesquite

each having previously been shipped or transported in interstate and foreign commerce.

In violation of Title 18, United States Code, Section 922(n).

COUNTS 2-9

False Statement to Purchase Firearm
(Violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(2))

On or about the following dates in January 2003, in each count below, in the Dallas Division of the Northern District of Texas, *Keshia Cherie Ashford Dixon*, defendant, in connection with her acquisition and attempted acquisition of the firearms described below from the corresponding licensed dealers,

COUNT	DATE	FIREARM	SERIAL NUMBER	DEALER/ SHOW LOCATION
2	01/04/03	Hi-Point, CF, .380 caliber pistol	P773713	Texas Star Gun Sales Dallas Market Hall

3	01/04/03	Hi-Point, CF, .380 caliber pistol	P773715	Texas Star Gun Sales Dallas Market Hall
4	01/04/03	Intratec, Tec-22, .22 caliber pistol	025815	Silent Inovations Dallas Market Hall
5	01/11/03	Jennings, 9, 9mm pistol	1537984	Graves Guns Big Town in Mesquite
6	01/11/03	Masterpiece Arms, MPA 10, pistol	AO984	Graves Guns Big Town in Mesquite
7	01/11/03	Masterpiece Arms, MPA10, .45 caliber pistol	AO981	K K Sales Big Town in Mesquite
8	01/11/03	Hi-Point, 995CN, 9mm carbine rifle	B52203	K K Sales Big Town in Mesquite
9	01/11/03	Hi-Point, 995CN, 9mm carbine rifle	B19559	Marshal Armaments Big Town in Mesquite

did knowingly make a false and fictitious written statement to each licensed dealer, which was likely to deceive the licensed dealer as to a fact material to the lawfulness of her acquisition and attempted acquisition of the firearm, in that *Dixon* responded "No" to question 9(b) on form 4473, "Are you under indictment or information in any court for a crime for which the judge could imprison you for more than one year?"

when in fact, as *Dixon* well knew, she was under indictment in the United States District Court for the Northern District of Texas, Dallas Division, in cause number 3:01-CR-385-P.

In violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

A TRUE BILL

/s/ [illegible]
FOREPERSON

JANE J. BOYLE
United States Attorney

/s/ Candina S. Heath
CANDINA S. HEATH
Assistant United States Attorney
Texas State Bar No. 09347450
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Tel. 214.659.8600
Fax. 214.767.2846

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

VS.

KESHIA CHERIE ASHFORD DIXON

INDICTMENT

18 USC 922(n) AND 18 USC 922(A)(6) and 924(A)(2)
ACQUISITION OF GUN WHILE UNDER INDICTMENT
AND FALSE STATEMENT TO PURCHASE FIREARMS

9 COUNTS

A true bill,
/s/ [illegible]
DALLAS FOREPERSON

Filed in open court this ___ day of ___, A.D. 20__.

Clerk
IN CUSTODY.

/s/ Jorge A Solis
UNITED STATES DISTRICT JUDGE
3:03-MJ-024

J. CRAIG JETT
ATTORNEY AT LAW
THANKSGIVING TOWER
SUITE 2000
1601 ELM STREET
DALLAS, TEXAS 75201-4718

(214) 871-7676

FAX (214) 979-0001
EMAIL jcj@mcmclaw.com

OF COUNSEL TO
MCCOLL & MCCOLLOCH

August 6, 2003

via facsimile and regular U.S. Mail

Ms. Candina S. Heath
Assistant United States Attorney
1100 Commerce Street, 3rd Floor
Dallas, TX 75242-1699

Re: Cause No. 3:03-CR-0055-P
United States vs. Keshia Cherie Dixon

Dear Ms. Heath:

This letter is in response to Judge Solis' order requiring disclosure of defendant's intent to offer expert testimony and the disclosure of the identity of an expert witness. Please be advised that if I believe the government has proved the allegations in the indictment beyond a reasonable doubt that I plan to call an expert witness to offer testimony on behalf of Keshia Dixon. I disagree that notice under Rule 12.2(b), Fed. R. Crim. Pro., is required because I do not believe that the subject of the expert testimony will be a mental disease or defect or other mental condition of the defendant.

In your motions you assert that the defendant has an obligation under Rule 16(h)(1)(C), Fed. R. Crim. Pro. to give the government, upon request, a written summary of any testimony the defendant intends to use as evidence at trial under Rule 702, 703, and 705, Fed. R. Crim. Ev. That obligation is contingent upon one of two matters. The obligation to provide that disclosure is invoked if the defendant has requested disclosure under Rule 16(a)(1)(G). A review of the motions filed on behalf of Ms. Dixon in this case does not reveal a request to the government for discovery under that section. The second way that this duty of disclosure is invoked is if the defendant has given notice under Rule 12.2(b) of the intent to present expert testimony on the defendant's mental condition. Rule 16(b)(1)(C)(ii), Fed. R. Crim. Pro. As I have stated above, I do not intend to call a witness who will testify to a mental disease or defect or other mental condition of the defendant.

As the Court requires that both sides provide a list of witnesses, who are to be designated as fact or expert, I have submitted a list of witnesses which lists Toby Myers as an expert witness. Dr. Myers is an expert on domestic violence and how people react to and how it affects people, particularly women. If called as a witness, Dr. Myers will testify that Keshia Dixon has experienced violence, abuse and control at the hand of intimate partners for years up to shortly before and at the time of the purchase of the firearms. I believe Dr. Myers will testify as to how Ms. Dixon's life circumstances, particularly the domestic violence, affected her judgment and her behavior. Dr. Myers' testimony will support defenses of duress and/or necessity. Dr. Myers' testimony will be based upon her interviews with the defendant and the defendant's family, court documents from Ms. Dixon's prior case, testimony from the detention hearing and information about the prior criminal history of the perpetrators of the violence against her. Dr. Myers' opinion will also be based upon her

vast experience in the field, which is set out in her *Curriculum Vitae* which accompanies this letter.

Very truly yours,

/s/ J. Craig Jett
J. CRAIG JETT

JCJ/sp
Enclosures
cc: Honorable Jorge Solis

CURRICULUM VITAE

Toby Myers
713.668.6942
email: tobymyers@yahoo.com
website: http://home.houstonrr.com/tobymyers
(in construction)

EDUCATION:

DEGREES

University of Houston. EdD , 1976
University of Texas at Austin, MEd, 1965
University of Texas at Austin, BS, 1959

GRADUATE COURSES

Baylor College of Medicine, Houston, 1972
West Texas State University, Canyon, 1964
Southern Methodist University, Dallas, 1959

OTHER

Instensive German Course for Foreigners-Universitaet Gesamthochschule, Siegen, Germany, 1982

FELLOWSHIP:

Texas Research Institute of Mental Sciences Predoctoral Fellowship

DISSERTATION:

The Effect of Creative Dramatics on Language Development and Treatment Progress of Children in a Psychotherapeutic Nursery

WORK:

PRIVATE PRACTICE
Houston, TX; Counseling and Psychotherapy Consultation. Expert Witness testimony and related as-

sistance in Domestic Violence cases for prosecution and defense, in related family, criminal, immigration, personal injury, employment matters in courts, before licensing boards, and other official hearings, 1980-Current

AID TO VICTIMS OF DOMESTIC ABUSE
Houston, TX; Founder and Director of Battering Intervention Service 1984-1999; Part-time staff, 1999-2002

HOUSTON INTERNATIONAL HOSPITAL
Houston, TX; Director of Staff Development and Continuing Education, 1983-1985

TEXAS COUNCIL ON FAMILY VIOLENCE
Austin, TX; Director of International Development Project, 1981-1982

TEXAS WOMAN'S UNIVERSITY
Houston, TX; Associate Professor, Child Development and Family Living, 1979-1982

TEXAS RESEARCH INSTITUTE OF MENTAL SCIENCES
Houston, TX; 1974-1979. Research Specialist, 1978-1979: Research Associate, 1975-1978: Predoctoral Fellow, 1974-1975

TEXAS REHABILITATION COMMISSION
Houston, TX; Vocational Rehabilitation Counselor, 1968-1974

PUBLIC SCHOOL TEACHING
Dallas, TX ISD, 1959-1960: Special District for the Education and Training of Handicapped children of St. Louis County, MO, 1960-1961: Normandy, MO ISD, 1961-62: Amarillo, TX ISD, 1962-1964: Uvalde, TX ISD, 1964-1965

ADJUNCT ACADEMIC APPOINTMENTS:

UNIVERSITY OF TEXAS SCHOOL OF PUBLIC HEALTH
Houston, TX; Behavior Sciences, 1979-1998

UNIVERSITY OF HOUSTON CLEAR LAKE
Houston, TX; Human Science, Early Childhood, 1983-1989

CERTIFICATION:

LICENSED MASTER'S SOCIAL WORKER-ADVANCED CLINICAL PRACTITIONER.
S13291—Texas State Board of Social Work Examiners

LICENSED PROFESSIONAL COUNSELOR, 08309—Texas State Board of Examiners of Professional Counselors

LICENSED PSYCHOLOGICAL ASSOCIATE.
4-0884—Texas State Board of Examiners of Psychologists

PSYCHOLOGIST AND EDUCATIONAL SPECIALIST, 113. 125. Texas Department of Mental Health and Mental Retardation-Diagnostic and Evaluation Team

CERTIFIED GROUP THERAPIST, 24887—American Group Psychotherapy Association-National Registry of Certified Group Therapists

CERTIFIED REHABILITATION COUNSELOR, 03016—National Rehabilitation Association-retired

TEACHER and EDUCATIONAL DIAGNOSTICIAN, Texas Education Association

PUBLICATIONS:

Myers, T. Review of Silence is Deadly: Judaism Confronts Wifebeating by Naomi Graetz: *Violence Against Women*, 6, 3, 2000.

Myers, T. Re-offending in battering Intervention Programs. *Violence Update* 4, 3, 1993.

Myers, T. An interview with Carol Nadelson, first woman president of the American Psychiatric Association. *The Journal: Houston International Hospital*, 3, 2, 1985.

Eddy, M.J. & Myers, T. Helping Men Who Batter: *A Survey of Programs in the U.S.*, Texas Department of Human Services. 1984.

Myers, T. & Gilbert, S. Wifebeaters' group through a woman's center: why and how. *Victimology: An International Journal*. 8, 1-2, 1983.

Myers, T. & Wright, D. Raised in violence. Texas *Child Care Quarterly*, 4, 1980.

Coleman, K.H., Holley, M. & Myers, T. Sex-role stereotypes: they contribute to conjugal violence. *Handbook of the Proceedings of the United States Commission of Civil Rights Hearings on Domestic Violence*, Washington, D.C., 1978.

Faires (former name), T. A group experience to foster mothering skills in drug using mothers. *Drug Forum*, 5, 2, 1977: in Olson, D. (ed.) *Inventory of Marriage and Family Literature*, V, St. Paul; University of Minnesota Press, 1977-1978.

Faires (former name), T. Vocational rehabilitation of the drug abuser in the southwest, *Vocational Rehabilitation of the Drug Abuser*, Department of Health, Education and Welfare, Social and Rehabilitation Services, Washington, D.C., 1973.

APPOINTMENTS:

Research Advisory Committee of the Greater Houston Women's Foundation, 1997

Jewish Advisory Board of The Center for the Prevention of Sexual and Domestic Violence, Seattle, WA; 1992-Current

Surgeon General's Workshop on Violence and Public Health by C. Everett Koop, M.D., Surgeon General of the U.S. 1985

Interpersonal Violence Committee, University of Texas Health Science Center at Houston by Roger Bulger, President, 1985-1990

Family Violence Advisory Committee to the Texas Department of Human Services by Chair of TDHS Board, 1984-1988; Chair of Committee, 1984-1987

Family Self Support Advisory Committee to the Texas Department of Human Services by Commissioner, TDHS, 1982

BOARDS:

NATIONAL TRAINING CENTER ON DOMESTIC AND SEXUAL VIOLENCE, 1998-Current; Member of Founding Board, Secretary

HARRIS COUNTY DOMESTIC VIOLENCE COORDINATING COUNCIL Board; 1998-Current; Death Review Team Co-Chair 2001-Current

TEXAS COUNCIL ON FAMILY VIOLENCE, 1978-1998; Member of Founding Board; Chair, 1978-1981

UNIVERSITY OF HOUSTON, Friends of Women's Studies Board, 1993-1999

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, 1982-1985

AID TO VICTIMS OF DOMESTIC ABUSE, Founding Board, 1980-1990; Treasurer, 1987-1990

COALITION AGAINST DOMESTIC ABUSE, Secretary, 1987-1988: Chair, 1988-1989

DOMESTIC VIOLENCE INSTITUTE, Denver, CO: Advisory Board, 1990

UNIVERSITY OF HOUSTON-UNIVERSITY PARK, WOMEN'S STUDIES, Advisory Board, 1991-1998

HOUSTON GROUP PSYCHOTHERAPY SOCIETY, 1989-1992; 2000-Current

HOUSTON METROPOLITAN MINISTRIES, Overseers Board, 1984-1986

HOUSTON AREA WOMEN'S CENTER, Founding & Executive Board, 1977-1978

HEBREW ACADEMY, Board & Executive Board, 1977-1980

HOUSTON AREA FEMINIST FEDERAL CREDIT UNION, Credit Committee, 1975-1978

EDITORIAL BOARD:

Violence Against Women: An International and Interdisciplinary Journal. Sage Periodicals Press: Thousand Oaks, CA 1996-2000

Journal of Religion and Abuse: Advocacy, Pastoral Care and Prevention. The Haworth Pastoral Press: Binghamton, NY 2001-Current

AWARDS:

Woman of Distinction 2001, The Bridge. Pasadena, TX 2001

Woman of Influence Recognition; Women's Group of the Unitarian Church, 1993

Lifetime Board Seat: Texas Council on Family Violence, 1991

Statewide Leadership Award: Texas Council on Family Violence named in honor of Toby Myers. 1989

Spotlight Award: National Council on Crime Prevention, 1989

Special Commendation; Texas Department of Human Services Board for work in Battered Women's Movement, 1988

Hannah G. Solomon Award: National Council of Jewish Women as outstanding woman contributor to positive change, 1986

Member of the Year: Texas Council on Family Violence, 1982

HIGHLIGHTS:

INVITED GOVERNMENTAL TESTIMONY

TX Senate Interim Committee on Domestic Violence, Houston, TX 1994; TX Supreme Court Hearings on Gender Bias, Houston, TX, 1992; TX Punishment Standards Commission, Houston, TX 1992; US Attorney General's Task Force on Family Violence, San Antonio, TX, 1984; TX House and Senate on Domestic Violence Legislation, 1979, 1981, 1988; US House of Representatives, Committee on Science and Technology Hearings on Domestic Violence, Washington, D.C., 1978

GRANTS AWARDED

TX Department of Criminal Justice-Batterer's Intervention and Prevention Project $73,500 co-

authored with R. Gerson, 1990-2000. Ark-Tex Council of Governments, $5400 co-authored with J. Basen, 1987; Texas Department of Human Services, $10,000 co-authored with M. Eddy, 1983; Texas Department of Human Services, co-authored with S. Eggert & M. Morse, $42,500

SPECIAL PROJECTS

MS FOUNDATION GALA, Organized segment, 1984. WOMEN'S SUMMIT FOR HOUSTON in both 1990 AND 1992, Crimes Against and Fear of Women in Houston sponsored by Houston Police Department; Steering Committee and Presenter. TEXAS SENATE JURISPRUDENCE COMMITTEE to evaluate condition of battered women in prison assistance in organizing carrying out hearings, 1989. STANDARDS AND OPERATIONAL GUIDELINES DEVELOPMENT for Texas Battering Intervention and Prevention Programs, 1993-1994.

TRAINING

Houston Police Department, 1982-1990. Harris County Community Supervision and Corrections Department, 1984. Ark-Tex Council of Governments, 1987. Harris County Sheriff's Department, 1990, TX Division of Pardons and Paroles, 1991.

CONSULTATION

U. S. Department of Defense Task Force on Family Violence, Offender Accountability, 2002.

MEMBERSHIPS:

American Group Psychotherapy Association Clinical Member

Houston Group Psychotherapy Association

American Counseling Association

Texas Council on Family Violence

National Coalition Against Domestic Violence

National Council of Jewish Women

Harris County Domestic Violence Coordinating Council

PRESENTATIONS AND PAPERS:

Drugs, Alcohol and Vocational Rehabilitaiton. Texas Rehabilitaiton Association Houston, TX; July, 1973.

These Too Are Our Children: Historical Overview of Children With Handicaps. Head Start Regional Meeting. Houston, TX; November, 1976.

Creative Dramatics. Harris County Licensed Child Care Annual Workshop. Houston, TX; November, 1976; March, 1977.

Creative Dramatics in a Therapeutic Nursery. American Association of Psychiatric Services for Children. San Francisco, CA; November, 1977.

Pow! Right in the Kisser. Wifebeating. American Psychiatric Association. Toronto, Canada; May, 1977.

Wham! Bam! No, Thank You. Man; Battered Women and their Children. American Association of Psychiatric Services for Children. Washington, DC; 1977.

Battered Women. Texas Research Institute of Mental Sciences and Houston Area Women's Center Workshop; Houston, TX; January, 1978.

Domestic Violence. Woman's Week at the University of Houston Clear Lake. Houston, TX; January, 1978.

Genesis of a Child Therapy Training Program. American Association of Psychiatric Services for Children. Atlanta, GA; November, 1978.

Victim: The Battered Woman; B'nai Brith Women Southwest Conference, Houston, TX; May, 1978.

Domestic Violence. Women's Week at the University of Houston Clear Lake. Houston, TX; January, 1978.

Battered Women. Women's Studies Association. South Central Regional Meeting, Denton, TX; May, 1978; National Meeting. Lawrence, KS; June, 1979.

Child Therapists: From Whence They Come. Texas Association for the Education of Young Children. Dallas, TX; October, 1979.

Experiential Group as Training for Child Therapists. American Association of Psychiatric Services for Children. Chicago, IL; November, 1979.

Children of the Shelter. Technical Assistance Center on Family Violence Conference. Houston. TX; January, 1980.

New Resources for Abused People. Women's Week at the University of Houston Clear Lake. Houston, TX; March, 1980.

Domestic Violence: The Unspoken Crime. National Association of Community Health Centers. Houston. TX; September, 1980.

Victims of Family Violence: Defining the Network. Texas Children's Hospital Conference on Abuse. Houston, TX; September, 1980.

Current Issues for Battered Women. Womanfair-South Central Women's Studies Association. Arlington, TX; October, 1980.

Creative Dramatics in a Therapeutic Nursery: Research Results, American Association of Psychiatric Services for Children. New Orleans, LA; November, 1980.

Raised in Violence. American Association of Psychiatric Services for Children. New Orleans, LA; November, 1980.

Women and Judaic Tradition. First Annual Women's History Conference of the American Association of University Women. Houston, TX; March, 1981.

The Battered Woman. Houston Women Take Back the Night. Houston, TX; April, 1981.

Domestic Violence: Treatment for Batterers. International Institute for Higher Studies in Criminal Sciences' Seminar on Victimology. Syracuse, Italy; January, 1982.

Domestic Violence: A Seminar. Max-Planck Institute for Foreign and International Criminal Law. Freiberg, Germany; April, 1982.

Family Violence Texas Women's Political Caucus Annual Conference. Austin, TX; December 1982.

Battered Women in Group. Houston Group Psychotherapy Society Annual Institute, Houston, TX; April, 1983.

History of the Battered Women's Movement. Texas Council on Family Violence. 4th Annual Conference. Austin, TX. October, 1983.

Helping Those Who Batter. Second National Conference for Family Violence Researchers. Durham, N.H.; August, 1984.

Going to Court with Battered Women. Texas Council on Family Violence 5th Annual Conference. Austin, TX: October, 1984.

Women with Severe Psychiatric Problems in Shelter. Texas Council on Family Violence 5th Annual Conference. Dallas, TX; November, 1985.

Men Who Batter: Current Thoughts, Treatment, and Vicissitudes. Houston Group Psychotherapy Society Institute, Houston, TX: March, 1986.

But Jewish Women Don't Get Battered.

Mothers and Daughters: End of the Decade. Third National Conference of the National Coalition Against Domestic Violence. St. Louis, MO: July, 1986.

Dynamics of Family Violence. First Annual Institute on Family Violence of the Criminal Justice Center at Sam Houston State University. Huntsville, TX; August, 1986.

Family Violence. U.S. Probation and Parole South Central Conference. Houston, TX: September, 1986.

Treatment of Men Who Batter. Institute at Texas Council on Family Violence 7th Annual Conference, South Padre Island, TX; October, 1986.

Some Lovers Break More Than Hearts. Women and the Law Conference of the Texas Bar Association, Austin, TX: February, 1987.

Family Violence: Treatment of Men Who Batter. Houston Group Psychotherapy Society Annual Institute. Houston, TX; March, 1987.

History of the Battered Women's Movement. Occupational Health Nurse Conference. Houston, TX; March, 1987.

The Battering Cycle: Dynamics of Family Violence. Methodist Hospital, March of Dimes, and Greater Houston Area Council on Family Violence. Houston, TX; April 1987.

Conflicts Between Confidentiality and Advocacy. First National Conference on Treatment of Batterers. Baltimore, MD: April, 1967.

Issues Surrounding Abuser Services. Illinois Coalition Against Domestic Violence Annual Conference. Springfield, IL; June, 1987.

Battered Women and the Men Who Batter Them, American Association of University Women Annual Conference. Houston, TX; June, 1987.

This is Not a Job: It's a Crusade. Texas Council on Family Violence 8th Annual Conference. Austin, TX; October, 1987.

Wifebeating. Mental Health Association Workshop. Beaumont, TX; March, 1988.

Some Lovers Break More Than Hearts. Houston Group Psychotherapy Society Annual Institute. Houston, TX: March, 1988.

Family Violence. Texas Woman's University Preceptorship Training for Nurses. Austin, TX; April, 1988.

Battered Women. University of Texas Medical Branch Continuing Education Seminar for Nurses. Brownsville, TX; April, 1988.

Working with Battered Women in Migrant Health Networks. National Association of Community Health Centers. Hollywood, FL; May, 1988.

Battered Jewish Women; Can We Deliver What They Need? Fourth National Conference of the National Coalition Against Domestic Violence. Seattle, WA; July, 1988.

New Research in Family Violence. Second Family Violence Conference of the Criminal Justice Center at Sam Houston State University, Walker County Domestic Violence Council, and the Texas Council on Family Violence. Huntsville, TX; September, 1988.

Bringing Light to a Dark Subject: Violence in the Home. Bexar County Coalition on Domestic Violence. San Antonio, TX: October, 1988.

Some Lovers Break More Than Hearts: Keynote Address. First Annual Conference on Family Violence of El Paso Community College, El Paso, TX; November, 1988.

The Dynamics of Family Violence, Hispanic Women's Leadership Conference. Houston, TX; February, 1989.

Some Lovers Break More Than Hearts. A Feminist Approach to the Treatment of Wifebeaters. South Central Women's Studies Association. Houston, TX; April, 1989.

Intervention Strategies forVictims of Violence. Crisis Intervention Annual Conference. Houston, TX; April, 1989.

Break the Pattern Not the Partner. Houston Group Psychotherapy Institute. Houston, TX; April 1989.

Cooperation and Competition Between Programs Treating Men Who Batter. Second National Conference on Treatment of Men Who Batter. Baltimore, MD; April, 1989.

Battered Women's Defense: Expert Testimony. Training Conference Sponsored by Texas Council on Family Violence, Criminal Justice Division of the Governor's Office, and the Texas Department of Human Services. Austin, TX; May, 1989.

Domestic Violence Workshop. Lower Rio Grande Valley Developmental Center. McAllen, TX; June, 1989.

It Doesn't Happen in a Jewish Family . . . or Does It? American Jewish Committee's Women's Issues Series, Houston, TX; June, 1989.

Controversial Issues in the Treatment of Men Who Batter. Texas Council on Family Violence 9th Annual Conference. Austin, TX; October, 1989.

From Concept to Statute: Legislating for Battered Women. National Conference on Battered Women And Justice. St. Louis, MO; November, 1989.

She Asked For It; Techniques a Men Who Batter. Houston Group Psychotherapy Society. Houston, TX; April, 1990.

Where Should We Be Going? First Battered Women's Advocacy Training Conference. Battered Women's Advocacy Project and San Antonio College, San Antonio, TX; May, 1990.

The Fist and The Bottle: Partners in Crime. Spectrum. Houston, TX; June, 1990.

Avoiding Rape and Domestic Violence. Houston Women in the 90's. Women's Education and Leadership Foundation, Houston, TX; June, 1990.

Domestic Violence. Texas District and County Attorney's Association. Padre Island, TX; September, 1990.

The Battered Women's Movement. Texas History Association. Austin, TX: October, 1990.

Ethics in the Battered Women's Movement. Texas Council on Family Violence 10th Annual Conference. Austin, TX; October, 1990.

Shalom Bayit; Domestic Violence in Jewish Families.

The Ultimate Mitzvah: Chevra Kadisha, Texas Jewish Feminist Conference. Houston, TX: October, 1990.

Battered Women. Women at Risk Forum. City of Houston Health and Human Services Department. Houston, TX; March, 1991.

Wife Beating Can Be Beaten. Houston Group Psychotherapy Society. Houston, TX; April, 1991.

Ethical Considerations in the Battered Women's Movement. Texas Council on Family Violence 11th Annual Conference. Austin, TX; October, 1991.

Sexual Assault and Domestic Violence. Houston Group Psychotherapy Society Special Training. Houston, TX; January, 1992.

Working on Violence Against Women Through Social Organization. Houston Police Department et al, Summit II. Houston, TX; September, 1992.

The Definitive Course on Battered Spouse Syndrome. Texas District and County Attorney's Association. South Padre Island, TX; September, 1992.

Ethical Considerations in Battering Intervention and Prevention Programs. Texas Council on Family Violence 12th Annual Conference. Austin, TX; October, 1992.

Battered Women and Sexual Assault. Houston Group Psychotherapy Society Special Training. Houston, TX: January, 1993.

The Politics of Women's Health Care. Women's Health Challenge: Take the Initiative. Women's Studies Program of the University of Houston. Houston, TX: April, 1993.

Wife-battering and Child Sexual Assault in the Jewish Community. Center for the Prevention of Sexual and Domestic Violence Bi-National Conference. Chicago, IL; May, 1993.

Domestic Violence. Texas Association of Municipal Court Clerks. Houston, TX; May, 1993.

Men Who Batter Assessment Management and Prevention: Domestic Violence and the Health Care Provider. Harris County Hospital District, Harris County Medical Society and Houston Area Women's Center. Houston, TX; October, 1993.

Two Generations in the Texas Battered Women's Movement, Texas Council on Family Violence

13th Annual Conference. Austin, TX; October, 1993.

Shattered Shalom. Domestic Violence in Jewish Families. Jewish Family and Children's Service and Jimmy Carter Presidential Center. Atlanta, GA; January, 1994.

Ethics in Battering Intervention Programs: Accountability to Battered Women. Texas Council on Family Violence Forum. Austin, TX; March, 1994.

Multi-disciplinary Approach to Domestic Violence. Training Shelter Workers as Expert Witnesses. Arizonans Together For Victims For Justice. Phoenix, AZ; April, 1994.

What Does Race Have to Do With It? National Coalition Against Domestic Violence-Sixth International Conference. St Paul, MN; August, 1994.

Praises and Lamentations: Pathways to Healing through Storytelling.

Family Violence on Trial: New Applications of Expert Consultation. Texas Council on Family Violence 14th Annual Conference. Austin, TX; October, 1994.

Social Service for Social Change through a Program for Abusive Men. Texas Psychological Association Annual Conference. Houston, TX; November, 1994.

Special Topics in Group Psychotherapy: Group Treatment of Sexual and Domestic Abuse. Houston Group Psychotherapy Association. Houston, TX; January, 1995.

Working with Men Who Batter, Houston Bar Association, Houston, TX; April, 1995.

The PIVOT Project for Men Who Batter. University of Texas Medical Branch; Department of Psychiatry Grand Rounds. Galveston, TX; September, 1995,

BIPP Basics: Theory and Practice—Part I.

Are Battered Women Really Helpless?

Jewish Perspectives on Domestic Violence. Texas Council on Family Violence 15th Annual Conference. Dallas, TX; October, 1995.

Special Topics in Group Psychotherapy: Working with Perpetrators of Domestic Violence. Houston Group Psychotherapy Society. Houston, TX; November, 1995.

Effects of Race Ethnicity and Gender on Identification of Victims and Offenders. Harris County District and County Courts Judicial Conference on Family Violence, Sexual Assault and Child Abuse. Houston Bar Association. Houston, TX; June, 1996.

Spousal Privilege. Texas District and County Attorney's Association Key Personnel Seminar. Austin, TX; November, 1996.

Jewish Men Make Perfect Husbands—Or Do They? Jewish Women International et al National Conference on Abuse in the Jewish Home, Waltham, MA; April, 1997.

Representing the Battered Women: Effective Strategies for Civil Cases and Criminal Defense. Texas Young Lawyers' Association's Committee on the Prevention of Domestic Violence, Texas Council on Family Violence, Texas Lawyers

Care, State Bar of Texas Professional Development Program, Houston Volunteer Lawyers. Houston, TX; April, 1997.

A Program Staffs Response to Participation in Batterer Program Evaluation. 5th International Family Violence Research Conference. Durham, NH; July, 1997.

Pushy? Smart? Rich? Horns: Anti-Anti-Semitism Work for the Movement. Texas Council on Family Violence 16th Annual Statewide Family Violence Conference. Houston, TX; October, 1997.

Batterer's Treatment and Certification. National Network to End Domestic Violence Annual Meeting and Leadership Institute. Washington, DC; October, 1997.

Abuse: A Jewish Family Issue. Union of American Hebrew Congregations Biennial Conference. Dallas, TX; October 1997.

Current Knowledge of Batterers and Promising Intervention Programs, Domestic Violence Institute for Law Enforcement Trainers. Tucker, Buel and Associates. Austin, TX; December, 1997.

Effective Battering Intervention Programs. Coordinated Community Response to Domestic Violence. National Training Center on Domestic and Sexual Violence, Austin, TX; August, 1998.

So You're Going to Testify in a Family Violence Case. Texas Council on Family Violence 17th Annual Statewide Family Violence Conference, Corpus Christi, TX; October, 1998.

Domestic Abuse Happens in Jewish Homes. Denver Jewish Coalition Against Abuse. Denver CO; January, 1999.

Domestic Violence Hits Home: Groups for Men Working Toward Safety for Women. American Group Psychotherapy Association Annual Conference. Houston, TX; February, 1999.

Roles of Males in Finding Domestic Violence Primary and Secondary Prevention Strategies. The Next Millennium Conference: Ending Domestic Violence. US Department of HHS. Chicago, IL; August, 1999.

What is an Expert Witness. How and Why to Use Expert Witnesses, Surviving Cross Examination. Understanding the Process to Qualify Experts. Be Prepared; Issues and Strategies to be an Expert Witness in Domestic Violence Cases. The South Dakota Department of Social Services and the National Training Center on Domestic and Sexual Violence. Pierre, SD; December, 1999.

What Attorneys Who Represent Victims of Domestic Violence Need to Know. Qualifying, Examining and Cross-Examining Experts: Discussion and Demonstration. Representing Battered Spouses in Custody and Visitation Matters, Texas Bar Association and Texas Lawyers Care. Austin, TX; February, 2000.

Advocates as Expert Witnesses in Domestic Violence and Sexual Assault. The Changing Role of Law Enforcement in Ending Violence Against Women. National Training Center on Domestic and Sexual Violence. Austin, TX; November, 2000.

The Use of Expert Witness in Domestic Violence Cases. Women's Advocacy Project Conference. Austin, TX; February, 2001.

Why? Who? When? Where? How? Expert Witnesses for Domestic Violence and Sexual Assault Cases. National Training Center on Sexual and Domestic Violence Conference. Austin, TX; June, 2001.

Miles to Go Before We Sleep, Keynote Address at 5th Annual Laredo Webb County Domestic Coalition Conference. Laredo, TX; October, 2001.

Beyond Survival: Surviving After Abuse. Shalom Bayit Conference of Jewish Family and Children's Service. Louisville, KY; October, 2001.

Do Not Stand Idly By. Shalom Beyit Conference of Jewish Family and Children's Service. Atlanta, GA; February, 2002.

Domestic Violence Hits Home. Houston Group Psychotherapy Annual Institute. Houston, TX; April, 2002.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed Aug. 11, 2003]

3-03CR-0055-P

UNITED STATES OF AMERICA

vs.

KESHIA CHERIE DIXON

DEFENDANT'S REQUESTED JURY INSTRUCTIONS

TO THE HONORABLE JORGE A. SOLIS, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION:

COMES NOW Keshia Cherie Dixon, the Defendant in the above styled and numbered cause and requests that the Court submit the following instructions to the jury in this case.

Respectfully Submitted,

/s/ J. Craig Jett
J. CRAIG JETT
1601 Elm Street
Thanksgiving Tower
Suite 2000
Dallas, Texas 75201
Phone: 214-871-7676
Fax: 214-979-0001

Attorney for Defendant
Keshia Cherie Dixon

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Defendant's Requested Jury Instructions was hand delivered to Candina Heath, Assistant United States Attorney, 1100 Commerce Street, Dallas, Texas 75242-1699, on the 11th day of August, 2003.

/s/ J. Craig Jett
J. CRAIG JETT

REQUESTED JURY INSTRUCTION NO. 1

DURESS—ELEMENTS

The Defendant has offered evidence to show that at the time of the purchase of the firearms she was acting under duress or coercion. If a person commits an offense while under duress or coercion that person is not guilty.

Under our law, in order to be considered under duress or coercion the Defendant must present evidence of the following:

> *One*. That at the time of the conduct in question the Defendant was under unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury to herself or to another;
>
> *Two*. The Defendant had not recklessly or negligently placed herself in a situation where it was probable that she would be forced to choose the particular criminal conduct with which she is charged;
>
> *Three*. That the Defendant had no reasonable legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; and
>
> *Four*. That a direct causal relationship could be reasonably anticipated between the conduct alleged to be criminal and avoidance of the threatened harm.[1]

In determining whether the elements of duress are met you may take into account the situation in which the Defendant was allegedly subjected to duress. In addition to the immediate circumstances of the alleged criminal conduct, this would include evidence concerning the Defendant's past

---

[1] *United States vs. Willis*, 38 F.2d 170, 175, (5th Cir. 1994); *United States vs. Harper*, 802 F.2d 115, 117 (5th Cir. 1986)].

history with the person or persons making the unlawful threat. In order to show that the Defendant's alleged illegal conduct was the result of duress or coercion, it must be shown that the Defendant's fear is well-grounded. A fear that may appear irrational when viewed only in the light of the immediate circumstances may be well-grounded if the Defendant's experience with the person applying the threat, or other prior life circumstances of the Defendant, are such that she can reasonably anticipate being harmed for her failure to comply. It is not necessary for there to be proof that the Defendant did not recklessly or negligently place herself in a relationship with the person or persons making the threat, it is necessary that there be proof that the Defendant did not recklessly or negligently place herself in a situation in which it was probable she would be forced to unlawfully purchase the firearms alleged in the indictment. In determining whether or not you believe the Defendant had a reasonable legal alternative to violating the law, you must consider the circumstances from the perspective of the accused, taking into consideration her life circumstances and her past history with the person alleged to have made the unlawful threat. Finally, you must find that the Defendant reasonably believed that the alleged criminal conduct would avoid the threatened harm.[2]

_____ GRANTED

_____ DENIED

---

[2] [*United States vs. Willis*, 38 F.3d 170, 177 n.8 (5th Cir. 1994)].

REQUESTED JURY LNSTRUCTION NO. 2

DURESS: BURDEN OF PRODUCTION AND BURDEN OF PROOF

You are instructed that the Defendant has the burden of producing evidence to support each of the foregoing elements. If the Defendant produces evidence to support each of the foregoing elements, then the government must prove beyond a reasonable doubt the absence of duress or coercion. Therefore, if the Defendant produces some evidence that supports each of the four elements of the defense of duress or coercion, the government must prove the following beyond a reasonable doubt:

> *One*. That the Defendant was *not* under an unlawful and present, imminent and impending threat of such a nature that would induce a well-grounded apprehension of death or serious bodily injury to the Defendant or another; and
>
> *Two*. That the Defendant had recklessly or negligently placed herself in a situation where it was probable that she would be forced to illegally purchase firearms; and
>
> *Three*. That the Defendant, from her perspective and position, did have a reasonable legal alternative to violating the law, that is, the Defendant had a reasonable chance both to refuse to purchase the firearms and to avoid the threatened harm; and
>
> *Four*. That there was *not* a direct causal relationship between the criminal action taken and the avoidance of the threatened harm.

The government must prove each of the foregoing elements beyond a reasonable doubt. If the government fails to prove one of the foregoing elements beyond a reasonable doubt,

then you must acquit the Defendant and find that she is not guilty.

_____ GRANTED

_____ DENIED

[*Falcon vs. State*, 766 F.2d 1469, 1477 (10th Cir. 1985) citing *United States vs. Bailey*, 444 U.S. 394, 412-13 (1980); *Unite.' States vs. Campbell*, 609 F.2d 922, 924-25 (8th Cir. 1979), *cert. den'd* 445 U.S. 918 (1980); *Pattern Jury Instructions*, U.S. 11th Cir. District Judges Association (1985 Ed.); *United States vs. Campbell*, 675 F.2d 815, 821 (6th Cir. 1982), *cert. den'd* 459 U.S. 850].

REQUESTED JURY INSTRUCTION NO. 3

BURDEN OF PROOF—REASONABLE DOUBT

The indictment of formal charges against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.

Thus a defendant, although accused, begins the trial with a "clean slate"—with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless you the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

Defendant has pled "not guilty" to each of the charges in the indictment. These pleas put in issue each of the elements of the offenses, as described in these instructions, and the government has the burden of establishing each of these elements by proof beyond a reasonable doubt.

I have said that the government must prove each defendant guilty beyond a reasonable doubt. The question naturally is what is a reasonable doubt. The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after careful and impartial consideration of all of the evidence. A reasonable doubt is not a caprice, whim, or speculation. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy. Reasonable doubt is a doubt which would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a rea-

sonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

So if you, after careful and impartial consideration of all the evidence in the case, have a reasonable doubt that a defendant is guilty of the charge, you must acquit. If you view the evidence in the case a [sic] reasonably permitting either of two conclusions—one of innocence, the other of guilt—you should, of course, adopt the conclusion of innocence.[3]

_____ GRANTED

_____ DENIED

---

[3] *See*, Pattern Jury Instruction 1.06, United States Fifth Circuit (West 1990); Vol. 1, E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 12.10 (4th ed. 1992); *United States v. Curry, et al.*, Criminal No. CR-3-79-111 (Higginbotham, J.).

REQUESTED JURY INSTRUCTION NO. 4

EVIDENCE

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence, stipulations, and judicially noticed facts.

Exhibits which have been marked for identification but not received into evidence may not be considered by you as evidence. Only those exhibits received into evidence may be considered as evidence.

In judging the evidence, you must remember that the evidence does not include questions. Only the answers are evidence. But you may not consider any answer that I directed you to disregard or that I directed stricken from the record. Do not consider such answers. In addition, you must ignore any questions or suggestions raised by questions that were not answered because I sustained an objection to the question.

You are also to consider any stipulations between the parties as evidence. A stipulation is an agreement between the parties that a certain fact is true. You are to regard such agreed facts as true.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts of what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your verdict should be.

Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded.[4]

_____ GRANTED

_____ DENIED

---

[4] L. Sand, T. Siffert, W. Loughlin & S. Weiss, *Modern Federal Jury Instructions*, ¶ 2.01, at No. 2-3, 15.02, at No. 5-4 (1993) (adapted). [Model Instructions from this source are hereinafter cited as "Sand, ¶ ___, at No. ___."]

REQUESTED JURY INSTRUCTION NO. 5

NUMBER OF WITNESSES AND UNCONTRADICTED TESTIMONY

You should keep in mind throughout your deliberations that the burden of proof is always on the government, and the defendant is not required to call any witnesses or offer any evidence, since she is presumed to be innocent. The mere fact that one side called more witnesses and introduced more evidence than the other does not mean that you should find the facts in favor of that side.

_____ GRANTED

_____ DENIED

REQUESTED JURY INSTRUCTION NO. 6

CREDIBILITY OF ACCUSED AS WITNESS

A defendant who wishes to testify is a competent witness; and a defendant's testimony is to be judged in the same way as that of any other witness. However, always keep in mind that a defendant never has an obligation to testify.[5]

_____ GRANTED

_____ DENIED

[5] *See* Vol. 1, E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 15.12 (4th ed. 1992) (adapted).

REQUESTED JURY INSTRUCTION NO. 7

LAW ENFORCEMENT WITNESS

Because a particular witness may be a law enforcement officer such as an investigator, a government agent, or for that matter an employee of any other government agency, that does not mean that his or her testimony is deserving of any special consideration or any greater weight by reason of that fact.

It is quite legitimate for counsel to attack or question the credibility of an agent or other government employee on the ground that his or her testimony may be colored by personal or professional interest in the outcome of the case.[6]

_____ GRANTED

_____ DENTED

---

[6] *Bush v. United States*, 375 F.2d 602 (D.C. Cir. 1967); *United States v. Ronald Green*, No. 3:93-CR-204-D (N.D. Tx. Aug. 10, 1993) (court's charge at p. 8).

REQUESTED JURY INSTRUCTION NO. 8

"KNOWINGLY"—TO ACT

You will be asked to consider certain legal terms in your determination of the facts of this case, so at the outset, I will give you some definitions and explanations of legal propositions that you will be considering in your deliberations.

When words are used in this charge in a sense which varies from the meaning commonly understood and you are given a legal definition, you are bound to accept the definition in these instructions in place of any other meaning.

The word "knowingly", as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident, or other innocent reason.[7]

_____ GRANTED

_____ DENIED

---

[7] Pattern Jury Instructions 1.35, United States Fifth Circuit (West 1990) (adapted).

REQUESTED JURY INSTRUCTION NO. 9

IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is inconsistent with the witness' trial testimony. Evidence of the prior inconsistent statement was placed before you for the limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness' testimony.[8]

_____ GRANTED

_____ DENIED

---

[8] L. Sand, T. Siffert, W. Loughlin & S. Weiss, *Modern Federal Jury Instructions*, ¶ 7.01 at 7-73 (1993) (adapted). *See also United States v. Rogers*, 549 F.2d 490, 495-96 (8th Cir. 1976).

REQUESTED JURY INSTRUCTION NO. 10

CAUTION—CONSIDER ONLY CRIMES CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that each individual defendant is guilty of the crimes charged. Each defendant is not on trial for any act, conduct, or offense not alleged in the indictment.

_____ GRANTED

_____ DENIED

[Logo] U.S. Department of Justice
United States Attorney
Northern District of Texas

1100 Commerce St., 3rd Fl.
Dallas, Texas 75242-1699
Telephone 214.659.8600
Fax 214.767.2846

November 13, 2003

J. Craig Jett
Thanksgiving Tower, Suite 2000
1601 Elm Street
Dallas, Texas 75201-4718
Fax 214.979.0001

Re: *United States v. Keshia Cherie Ashford Dixon*,
3:03-CR-055-P

Dear Mr. Jett,

Since you have chosen not to share the basis of your theory of duress and/or necessity, it is difficult to evaluate what evidence in my possession may be beneficial to Dixon.

Please be advised that Thomas Earl Wright, Jr. told law enforcement on February 27, 2003, the following:

1. Wright and Corey Sanders were with Dixon at a gun show. At Dixon's request, they initially scouted out the different types of guns available, and showed Dixon which ones to purchase—because she did not know anything about guns.

2. Wright was in possession of currency belonging to Dixon, which he gave to Dixon for the purchase of the fire-arms. Wright habitually took most of Dixon's money and

gave her what he felt she needed to keep her from losing it all.

3. Wright and Sanders gave Dixon $115 each from their own money, for Dixon to purchase each of them a Hi-Point .380 cal semi-automatic pistol. They wanted Dixon to buy the guns for them because they had both been convicted of felonies in the past, and because Wright did not have an ID card.

4. The shotgun shells in Dixon's residence belonged to Wright.

Please be advised that Corey Sanders told law enforcement on June 3, 2003, the following:

1. Sanders and Wright were with Dixon at a gun show. At Dixon's request, they initially scouted out the different types of guns available, and showed Dixon which ones to purchase—because she did not know anything about guns.

2. Sanders and Wright gave Dixon some of their own money, for Dixon to purchase each of them a Hi-Point .380 cal semi-automatic pistol. Sanders provided $80 to Dixon. Sanders never took possession the pistol.

Thank you for your attention.

JANE J. BOYLE
United States Attorney

/s/ Candina S. Heath
CANDINA S. HEATH
Assistant United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

3:03-CR-055-P
November 17-19, 2003
Dallas, Texas

UNITED STATES OF AMERICA,

VS.

KESHIA CHERIE ASHFORD DIXON.

BEFORE THE HONORABLE JORGE SOLIS
UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES

FOR THE GOVERNMENT: U.S. ATTORNEY'S OFFICE
1100 COMMERCE,
THIRD FLOOR
DALLAS, TEXAS 75242
BY: MS. CANDY HEATH
MR. PATRICK McLAIN

FOR THE DEFENDANT: MR. J. CRAIG JETT
1601 ELM STREET, SUITE 2000
DALLAS, TEXAS 75201

OFFICIAL COURT
REPORTER: SHAWN McROBERTS, RMR, CRR
1100 COMMERCE, RM. 1654
DALLAS, TEXAS 75242
(214) 753-2349

[263] WALTER PENNINGTON,

TESTIFIED ON DIRECT EXAMINATION BY MR. McLAIN AS FOLLOWS:

* * * *

Q. Mr. Pennington, what do you do for a living these days?

A. I am a federal firearms licensed gun dealer.

* * * *

[264] Q. What is the name of the company that you either work for or own?

A. Texas Star Gun Sales.

Q. Is that your company? Do you own it?

A. Yes, sir.

* * * *

[268] Q. All right. Now, were you running a booth at Dallas Market Hall on the 4th of January of this year?

A. It is not a booth. It is a set of tables.

Q. A set of tables.

A. Yes, sir.

* * * *

[269] Q. Do you recall from way back in January making a sale to someone named Keshia Ashford? Do you have a recollection of that?

A. I do.

* * * *

[275] Q. Now, there is two at the top I want to focus in for just a moment. 12-A says, "Are you the actual buyer of the firearm listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm on behalf of another person." What is that all about?

A. That is mainly a straw purchase transaction.

Q. What does straw purchase mean?

A. Straw purchase is the person that buys the gun for another person.

Q. What if Ms. Ashford came up and said; "I want to buy this for my buddy here, Tom. I am going to buy it for him."

A. You cannot do it. I would not sell it to her.

Q. Is that your rule?

A. That is federal rules.

Q. Was there anybody with her that day she was buying weapons, as far as you remember?

A. As far as I remember, there was I think two men with her.

Q. And men, were they 40s, 50s, 20s? How old were they?

A. I would say late 20s, early 30s, but I am not sure.

Q. How do you know these guys were with her? What was it [276] about them that made you say they were with her?

A. They had walked up with her.

Q. Were they helping her select the firearm?

A. They were looking at firearms with her.

Q. Did you tell if they were the ones picking it out or choosing it?

A. No, it did not appear to me.

Q. Did they seem to be participating in the sale in any way as far as advice or telling her what to do or what have you?

A. No.

Q. Did you get any hint during that whole transaction that this was maybe a straw purchase, or maybe she was buying it as a gift for them or for them or what have you?

A. No.

Q. Would that have been a concern for you?

A. Had it been a concern, yes, I would not have sold any guns to her.

Q. What is the consequences to you if you let that happen?

A. I lose my federal firearms license, or I can lose it.

* * * *

[285] THE COURT: Mr. Jett.

CROSS EXAMINATION

By Mr. Jett:

Q. Good morning, Mr. Pennington,

A. Good Morning

Q. My name is Craig Jett. I represent Ms. Ashford. Are these gun shows pretty busy places?

A. Yes, they are.

Q. Lots of people there?

A. Most of the times; yes.

Q. And lots of guns get sold?

A. Yes.

Q. And are you kept pretty busy during the whole time you are there?

A. Not the whole time; no, sir.

Q. But sometimes I guess you get busy with looking at different things and having to deal with customers and wait on more than one person at a time?

A Well—

Q Is that true?

A. Yeah, that is true.

* * * *

[288] Q. You do recall that there were a couple of young black men with the lady who bought the two guns.

A. Yes.

Q. And you do recall them looking at guns and discussing the guns. Is that correct?

A. Somewhat.

Q. And were you dealing with other customers at the same time?

A. No.

Q. Were there other customers there?

A. There may have been.

Q. How many tables do you set up there?

A. Ten.

Q. Over what area do they take?

A. They are eight foot tables, and about 30 inches wide.

Q. So they are set up—

A. In a horseshoe.

Q. In a horseshoe?

A. Correct.

Q. So you have 80 feet worth of tables there. Is that right?

A. Yes.

Q. In a horseshoe?

A. Right.

* * * *

[290] Q. Well, is that where you do all your paperwork?

A. The last table; yes, sir.

Q. And that is the one that is the bottom of the U?

A. You could figure 35 feet maybe; yes.

Q Okay. And at the bottom of the U, that is where you keep your paperwork?

A. The bottom of the U? No, that is where I have got guns.

Q. Okay.

A. I am at the top of the U on the fifth table side.

Q. Okay. So you are at the top is where you sit?

A. Yes.

Q. So then at the bottom of the U would be another 30 or 40 feet away.

A. Correct; yeah.

Q. And so somebody could still be—You would be working on paperwork, and somebody could be 35, 40 feet away looking at firearms. Is that right?

A. Yes, sir.

Q. And you wouldn't be able to hear what somebody was saying 35 or 40 feet away, would you, if they are not talking to you?

A. Not necessarily.

Q. And did Ms. Dixon come in and browse around?

A. Who now?

Q. Did Ms. Ashford—

A. I can truthfully say most people browse around.

[291] Q. So these two guys with her browsed around as well?

A. Correct.

Q. And both of these two guys also asked you about guns, didn't they?

A. I don't recall that.

Q. Did they ask your wife about guns?

A. I don't recall that. You need to ask her about that, because I am not sure.

Q. You didn't hear them or observe them ask her about guns?

A. No.

Q. Certainly they could have asked her about guns and you wouldn't notice because you would be waiting on another customer?

A. I could be.

Q. But you don't remember enough detail about this transaction to know what happened, do you, in that regard?

A. The physical being there I don't remember so well. I am kind of fuzzy on it. All I know is I did the paperwork for her.

Q. Do you recall that one of these young men actually picked out the guns?

A. No, sir, I don't.

Q. When she did the paperwork, do you recall that one of the young men was standing right there with her?

A. Most people do stand back behind while the person that [292] they came with sits down and does paperwork.

Q. So you think that you recall one of the men standing right there with her while she filled out the paperwork?

A. Could possibly have.

* * * *

[296] PATSY JANE PENNINGTON,

TESTIFIED ON DIRECT EXAMINATION BY MR. MCLAIN AS FOLLOWS:

* * * *

[297] Q. Do you have set responsibilities in running Texas Star Gun Sales?

A. Yes, I do.

Q. What do you do for the business?

A. I help him work the shows as far as selling, and provide money to run the business. He does all of the inventory and the paperwork, but I am there to support him in the setting up on Fridays, and we take down the shows on Sundays, and then help in the weekend of the selling of the products.

* * * *

[300] Q. Do you recall ever having a customer come by your table by the name of Keshia Ashford?

A. I can't remember that specifically; no.

Q. All right. I want to take a moment. I have to grab—Ma'am, if you had a customer come by, your table and purchase a firearm from you, would either the form 4473 or the person's identification card jog your memory about that particular person; possibly jog your memory?

A. It could.

* * * *

[301] Q. What do you recall, after you have had a chance to look at this document?

A. She was a lady that—Our handguns, if I am standing in the center of the way we had our tables set up, our handguns were on the left on the end, and she was the lady that walked up to the Hi-Point firearms. She had someone else with her. She walked up several different times and kept looking at this particular firearm, because we had a number of them sitting there, and they were different models.

And then she went over—There is another vendor catty-corner to us that has a very similar firearm to ours, and [302] she went down to his table and then down that aisle several times. So I remember that very distinctly.

Q. Why does that stick in your mind?

A. Because the amount of time that she was spending at our tables, and the fact that she was looking so closely at the firearm. Women generally don't spend that length of time with firearms, because as a rule they don't know that much about them. And for a woman to stand and look at a firearm that long makes me know that, you know, I need to be aware of it, first of all, if I need to help, because they may have questions about "Why is this nine millimeter better than a .380? Why is this particular firearm, why does it not cost as much as some of the other firearms." All kinds of questions.

And then the amount of time that they took at our table, and then going over to the vendor from Bryan who was catty-corner from us. It is just unusual. It was unusual for a customer to spend that much time with us and the other vendor.

Q. You mentioned that someone was with her. Do you remember anything about that person or persons?

A. Only that—She seemed to be the one that was—She didn't know that much about them, and it appeared that possibly she was needing some information that the person that was with her was possibly providing. And I don't know that for sure.

Q. Male, female, young, old?

* * * *

[303] A. Male.

Q. Young, old? Anything about that person?

A. Same age; about the same age as the lady.

Q. Anything else physically about the person that you remember?

A. No.

Q. Do you remember independently on your own whether or not she purchased any firearms from you?

A. Yes, she did.

Q. What did she purchase?

A. Two of the Hi-Points.

* * * *

[304] Q. Yes, ma'am. Do you recall anything about this lady who bought these two pistols and this transaction? And I will start with physically. Anything about her physically?

A. She seemed average to me. Just seemed—She wasn't quite sure about the firearms themselves as fat as the types and that type, but as far as her appearance she was average.

[305] Q. Regarding the observation you just said, was she nervous?

A. No, not nervous. I just don't—

Q. Did she seem anxious at all?

A. Maybe a little nervous, but more that she wasn't—She didn't feel, or to me it didn't seem like she knew exactly which one to buy. If you have an idea of what you want, then you pretty much your behavior is such that, "Oh, yeah, that is what I want. This is what I like. I want this type of firearm." She didn't seem real secure in that.

Q. Did her nervousness or insecurity or petulance seem to be coming from fear or anxiety or anything like that, from what you could tell?

A. No, I wouldn't say that.

Q. How about the person with her? Do you recall anything about the way he was behaving?

A. Only in that the person seemed to be providing her some information. But I didn't hear it, so, I mean, that was just in body language

Q. Did he seem to be in charge? Did he seem like, for instance, he was really the one who wanted the weapon and she was just buying it for her for a gift or whatever?

A. Probably, Probably.

Q. Okay. Anything else about her demeanor? Do you remember relaxed, uptight, friendly, unfriendly?

A. Not really. Just she seemed unsure.

[306] Q. Did this person follow her everywhere she went, from what you recall?

A. Yes. Yes.

Q. Okay. Did he seem to be in charge of her?

A. I can't say.

Q. Okay, What is a straw purchase?

A. If you came to me and you wanted to buy a firearm and you said to me, "I am going to buy this, but I am actually buying it for this person here," that is a straw purchase.

Q. What if I was with my wife and I said, "I am going to buy this for my wife"?

A. Then as a gift purchase for her, that is very different.

Q. Okay. What if I was with my friend Bubba and I said, "I am going to buy this for Bubba"?

A: No.

Q. Why can I do it for my wife but not for my friend Bubba?

A. Well, there is an obvious connection between you and your wife, you know. And we know for sure, as best as we can, that that is being bought through you for your wife. Preferably if we know that is going to happen, we would prefer and nine times out of ten have her fill out the paperwork, put the gun in her name, because we want ourselves—As far as our business, we don't want any question to come back on the straw purchase.

Q. This straw purchase business, is that a Pennington or Texas Star Gun Sales rule?

[307] A. No, no, no. That is a federal rule, a federal law.

Q. Was there any indication of a straw purchase, from what you can recall, between this young lady who bought these two Hi-Point .380 pistols and this person?

A. Not to my knowledge; no.

Q. Did you inquire from her or get any information about what she was doing buying two of them?

A. Any time that I am selling—

* * * *

Q. Did she give you an answer?

A. Gift.

Q. I am sorry?

A. Yes, she did.

Q. Did she explain anymore than gift, or did she just say "It is a gift"?

A. Not that. I recall; no.

Q. Did she refer to both of them as gifts or one of them?

A. I don't remember.

Q. You don't remember that?

A. I don't remember that.

* * * *

[308] CROSS EXAMINATION

* * * *

[309] Q. But totally there would be thousands of people?

A. We would hope; yes; could be.

Q. And you all have it sounds like a pretty big set-up if You have ten tables worth of guns.

A. Yes, we do.

Q. And you sell handguns, long guns. What else do you sell?

A. Well, we have a few lasers.

Q. You say a laser. What is that?

A. They are an internal laser beam for the Glocks primarily, but we have some for the Berettas and Taurus. But they are an internal laser beam.

Q. Is this a separate item that you sell?

A. Yes, it is.

Q. Do you fasten it onto the firearm?

A. It goes inside.

Q. So you can buy the firearm with or without it?

A. Yes.

Q. Does it create a red dot like this?

A. Yes. It pulsates.

* * * *

MR. JETT: Q. The lasers you are talking about, they [310] create a red dot like this?

A. Pulsating; yes.

Q. What they do is they show you where the gun is aimed. Is that right?

A Yes.

Q. It is set up so it is aligned with the firearm with the barrell; it points the same way as the barrel does?

A. Yes.

Q. So it is an aiming device?

A. Yes.

Q. And it tells somebody where they are aiming the gun?

A. Yes.

Q. And it also tells somebody if they are a target. Right?

A. Yes.

Q. Now, you recall that there was the lady who bought these two Hi-Points, and there was somebody with her the whole time.

A. Yes, sir.

Q. Were both of these individuals African-American?

A. Yes.

Q. And you said that she was at the table and looked kind of undecided. Is that right? And he was talking to her?

A. I would say yes. I mean, she was undecided. She wasn't sure of the firearm she wanted.

Q. You saw another young black man with these two folks, did you not?

[311] A. I remember one other for sure. I don't remember two others; no.

Q. But you do recall that these people, at least the two people that you remember, were at your table and they walked away and then they came back. And do you remember how many times they came back?

A. Several.

Q. And each time that the woman came back, the man was with her. Is that correct?

A. Or in the near vicinity.

Q. And he was talking to her, from what you could see?

A. Yes, sir.

Q. Okay. And I guess you have other customers, or you did have other customers at the same time?

A. Possibly.

Q. You said you are looking around a lot. I guess that is to make sure to see what other people—see if there are any other customers that need help?

A. And just to keep an eye on everything. Of course, if Walt is not busy he is there to help.

Q. But it he is busy with paperwork, his eyes are focused on the paperwork in front of him. Right?

A. Uh-huh.

Q. So you would be the set of eyes there?

A. Uh-huh.

* * * *

[312] Q. So you are not watching people all the time when they are at your table, are you?

A. Well, I would say 95 percent of the time I am; yes.

Q. Well, if you have another customer at the table, then you have got to divide your attention between more than one customer, don't you?

A. I always acknowledge them and ask them to wait until I am finished.

Q. You didn't hear the conversation between the lady and the man about the gun, did you?

A. No, sir.

[313] Q. But you did conclude after watching them that you thought she was buying the gun for him.

A. One of them I felt sure, because it was a gift. I can't say both.

Q. That is because you asked her and she said it was a gift?

A. Uh-huh.

Q. Of course, if she had said, "Well, no. I am really just buying this for my friend here and his buddy," you wouldn't have made the sale, would you?

A. That is correct. I would not have.

Q. So if somebody is going to buy a gun for somebody else as a straw purchase, then they have to make a representation that they are not making a straw purchase. Is that right?

A. If we know that it is a straw purchase we are not going to sell it.

Q. I understand if you know that, but my question to you is, in order for somebody to make a straw purchase successfully, that person would have to tell you that it is not a straw purchase. Is that right?

A. It shouldn't even be a question.

Q. I understand it shouldn't be a question, but I am saying if a straw purchase was being made, then in order to successfully do it somebody would have to tell you it is not a straw purchase.

A. That is correct.

[314] Q. Now, that actually is really pretty hard to tell if something is a straw purchase or not a straw purchase, isn't it?

A. If it is or if it isn't.

Q. Yes, ma'am.

A. I guess you could say that.

Q. Now, did you see the money exchange hands for this transaction?

A I don't remember.

Q. I guess you didn't see the man give the woman any money, did you? Or did you see that?

A. I wouldn't have. There would have been no reason for me to.

Q. Well, if they were standing there by your table and he gave her money, you might see that.

A. If that had been the case.

Q Or if they went off somewhere else and he slipped her some money, you wouldn't have seen that, would you?

A. No.

Q. Do you all ask for social security numbers on the 4473 forms?

A. No, we don't.

* * * *

[315] MR. JETT: Q. After the decision was made to purchase the gun, did you have anything more to do with these two folks?

THE WITNESS: A. Well, I had to—Our supplemental supplies are underneath. We only keep one of each firearm out, so the additional firearms are down under the tables. So I had to pull the other one out and then take it down to Walt, and that is all I had to do with them.

Q. So you didn't observe the paperwork process?

A. I don't remember that, sir; no.

Q. Do you remember the man standing there with the woman while she filled out the paperwork?

A. I don't remember that. That would have been unlikely.

Q. Well, but you don't handle the paperwork?

A. No, sir, I don't.

Q. So it wasn't anything you would notice necessarily?

A. I could have noticed it, but not necessarily; no.

Q. But you do remember him being with her the entire time?

A. Yes, I do. Yes, I do.

[316] Q. Do you remember when the transaction was completed that he took the package?

A. I don't remember that; no.

* * * *

JOHN GRAVES,

TESTIFIED ON DIRECT EXAMINATION BY MR. McLAIN AS FOLLOWS:

Q. What is your job, sir?

A. I am a federal firearms dealer, federal firearm licensed dealer.

* * * *

Q. Do you own a company, or do you work for somebody else?

A. Business for myself.

Q. What is the name of your business?

[317] A. Graves Guns.

* * * *

Q. Were you participating in a gun show as a federally licensed gun dealer on the 11th of January of this year?

A. Yes.

* * * *

[324] Q. Do you recall anything about the lady who purchased these items or behavior or what she told you about it?

A. Well, she had a few friends with her. She walked up to the table and looked at the guns a few minutes, and she picked out these two and she said, "These are the ones I want to buy."

Q. You used the term "few friends." Had you ever met this woman before?

A. No.

Q. What told you that these people that were with her were her friends?

A. They come up as a group. And as a rule, most of the time the people that go to these gun shows, very few of them come by themselves. Like anything else, you enjoy doing anything, I guess, when you have someone with you, just for the company or whatever. But I knew that they were together. Just the way they acted and everything. But Ms. Ashford is the one that picked out the guns and said she wanted to buy those.

[325] Q. Did it seem like she was speaking for somebody else—in other words, she was buying it for someone else that really wanted them?

A. No.

Q. Why do you say that? I mean, why do you even remember whether that was the case?

A. Well, I have people at the gun shows a lot of people aren't able to buy guns because they do have bad history, background, or whatever, and they look at the guns and talk among themselves.

In fact, last month there was several people come up to the tables and wanted to purchase a gun, and they discussed it among themselves and said, "We will be back in a minute." And they came back. And this one girl had the money, and I told her, "I am not going to sell you the gun. I can't sell you

the gun," And she said, "Why?" And I said, "Well, you know, I don't believe it is going to be for you." And they kind of got a little bit upset, but they left.

But like I say, when she wanted to purchase the guns, I had no doubts she was in my mind, because she was buying them for herself.

Q. Why? I mean, are these two weapons at all unusual for people to buy?

A. No, not really. The Jennings is an inexpensive gun. I sell quite a few of them. The Masterpiece Arms, a while ago I [326] said it was an assault pistol, which it is an assault-type pistol. Most of the people that buy them, they love to shoot. They like to shoot. And I sell them to women as well as men.

Q. Just target practice shooting, or personal protection, or what is it used for?

A. The Masterpiece Arms type is more or less for fun, just take it out and do some shooting. Now, the Jennings, most of the people that buy these are just an inexpensive self-protection gun.

Q. Yes, sir. Did you have any straw purchase concerns during this entire transaction?

A. Sir?

Q. Did you have any concerns at all during this transaction that you thought there might be a straw purchase, or had to take any steps to assure it wasn't?

A. No.

Q. Did the—By the way, I don't think you said. Do you recall how many persons were with her?

A. I am going to say approximately three.

Q. Male, female?

A. I am thinking that there was a couple of males, at least a couple of males; maybe a female. But I think there was more male than female with her.

Q. And at any time did you see anything that looked like she didn't know what she was doing and she was going to have to get [327] direction from anyone of these persons she was with?

A. No.

* * * *

[332] CROSS EXAMINATION

* * * *

[333] Q. We were talking or you were talking about a straw sale. Now, if you knowingly made a straw sale or made a sale to a straw person, then you could lose your firearms license, could you not?

A. Yes.

Q. And if you knowingly sold a gun to somebody who was prohibited from having a gun, you could also lose your firearms license.

A. Correct.

* * * *

[336] Q. Now, you said that when these two firearms we are talking about were sold, you said there was a group of people together?

A. There was two or three others, as far as I remember, that was with her; yes.

Q. Okay. And you said two or three. Were two of them kind of young black men?

A. As far as I can recall.

Q. And was there another one who appeared to be an Hispanic man?

A. That I don't recall.

Q. But you remember there was—You think there was a third person?

A. Yes. I am saying I thought there was two or three, but couldn't swear to either one of them.

Q. And they all appeared to be looking at the guns?

[337] A. Well, to a certain extent; yes.

Q. Well, the young men who were with the lady who bought the gun, they did appear to be looking at the guns, did they not?

A. Well, yeah; they were looking at the guns also.

Q. So she certainly was not the only person looking at the guns in this little group.

A. No.

Q. Had you seen them earlier in the day?

A. That I don't recall.

Q. You couldn't tell whether they had been wandering around the gun show?

A. No.

Q. You don't notice everybody who wanders through, do you?

A. Well, I notice what I call regular people. I see them from—There are people that go from Houston to Fort Worth just to go to the gun shows just to walk around. But now, as far as recalling seeing them before they made the purchase, I do not.

* * * *

MR. JETT: Q. Now, you testified as well that if you thought that there was a straw purchase, you would not have made the sale.

[338] THE WITNESS: A. Exactly.

Q. Now, if somebody had experience buying guns, then they would understand that you couldn't make a straw sale. Is that right?

A. Sure; yeah.

Q. And I assume you didn't see that one of these men gave the lady who bought the gun some money?

A. No.

Q. But they certainly could have done that some place where you could not see them.

A. Yeah. It is entirely possible; yes.

Q. And somebody could have been looking at guns somewhere else and then decided to buy your gun.

A. Possibly.

Q. Now, do you recall that when the form was filled out, that the young men were there with her?

A. Yes.

Q. Were they standing over her talking to her?

A. No. They were kind of actually in the background, so-to-speak, When she told me what gun she wanted, I directed her to the chairs to sit down and fill out the forms, and the other ones just, like I say, was in the background then.

Q. Just stayed back and watched?

A. Yes.

Q. They didn't look at anymore guns?

[339] A. As far as I can recall, no.

Q. So once the sale decision was made, then the lady filled out the forms, and the two guys just sat in the back like there was nothing else they needed to do.

A. Say it again now.

Q. The lady filled out the form, and the two men just kind of stood back like there was nothing else they needed to do.

A. Well, once she told me what guns she wanted to buy, like I said, I directed her to the yellow forms, and then I concentrated—While she was filling out the form, I was concentrating on the tables again.

* * * *

[340] MR. JETT: Q. After the form was filled out and the guns were purchased, do you remember the young men, one of the young men taking the package and walking off with it?

THE WITNESS: A. I took the money from her and handed her the firearm.

Q. Do you remember her handing the package to them as they walked off?

A. No, I do not.

* * * *

[341] BRIAN KENDRICK,

TESTIFIED ON DIRECT EXAMINATION BY MS. HEATH AS FOLLOWS:

* * * *

Q. Can you tell the jury a little about your background, education, and work experience?

A. I have been a federally licensed firearms dealer since about 1986. Prior to that for three years I worked in a gun shop, Oshman's Sporting Goods, and in between that time I also worked at Wal-Mart as a department manager for the firearms department.

* * * *

[342] Q. Now, with regard to selling firearms, what company do you currently work for?

A. KK Sales. That is my company.

* * * *

[343] Q. Let me direct your attention back to January of 2003, specifically January 11th, and ask you if you were at the Big [344] Town Gun Show in Mesquite, Texas?

A. Yes.

* * * *

[349] Q. Please describe who came to your table, what individual came to your table.

A. Okay. Ms. Ashford came to the table, and she was looking at the—I remembered her standing there for a while because I was helping another customer. Then when I came to her and asked if she needed help, she indicated she wanted the MPA10. And so I, directed her down to the paperwork

table, and she went down over there and started filling out the 4473 form.

Q. Did she have anybody with her at the time?

A. There were several, two or three younger black males.

Q. Did they come to the table with her to pick out guns?

[350] A. No. They sort of stood around. I figured they were her kids.

Q. When you say younger, do they look about what a children's age may have been?

A. I thought maybe 16, 17 years old; something like that.

Q. Did they at any time take part in the transaction, come up to the table, pick out guns, handle guns?

A. No.

Q. At any point during the transaction did you see her consult with them about what guns she may need to buy?

A. No. She sat down and did the paperwork. She was very pleasant. And she filled out the paperwork and that was it. She was pretty quiet.

Q. You said she was pleasant. Did she seem rushed at all about getting the firearm?

A. No. She just seemed like a real nice person.

* * * *

[355] Q. Now, did Ms. Ashford have any questions about these guns, the use of the guns, or maintenance or cleaning, repair, ammunition, anything like that?

A. No.

Q. Approximately how long was that transaction for the sale of the Masterpiece Arms?

A. Oh, it takes about five minutes from when they start the paperwork. They go through the paperwork, and then when you call it in it goes pretty quickly.

Q. Did you receive cash, check, credit card?

A. I don't remember offhand. I don't remember.

Q. Once you received payment for the gun, did you give the gun to Ms. Ashford?

A. Yes.

[356] Q. And then did you see Ms. Ashford again during the gun show?

A. Yes. She came back a second time and asked me about a delay, that she had gotten delayed. And at the time I didn't remember. I said, "I thought you got a proceed." And I pulled out the paperwork. I said, "No, you got a proceed." And I said, "You received the firearm."

And she said, "No, at another table." So I gave her the number off the form, the NTN number, and she took it back to the other table, I guess.

Q. When she came to the table, did she come to the table by herself that second time?

A. Yes.

Q. Were the other young males with her?

A. Not at that time I don't remember them being there.

Q. Okay. Did she have anymore firearms in her possession or any other packages in her possession that you could tell?

A. I didn't see any.

Q. Did she indicate what table she had gone to and received a delay?

A. No.

Q. Did that cause you concern?

A. Well, I said, you know, "you got proceed over here." And then she went, and then she came back later and purchased another one. And she said she got it all cleared up over there; they had made a mistake.

[357] Q. Now, when she came back the third time, was anybody else with her?

A. Those kids were still with her.

Q. What is the passage of time, as you recall, between the first purchase of the firearm and the second purchase?

A. I think it was a couple of hours, if I am not mistaken. It was a pretty busy show, but I think it was a couple of hours.

Q. At the next purchase what is going on? Tell the jury about her coming to the table.

A. Well she came up the same way, basically. She said she wanted that Hi-Point carbine. And I directed her down there to fill the paperwork out. We went through the same procedure again. I called it in, she got a proceed, and then she paid and left.

* * * *

[358] Q. Now, on this next gun, the Hi-Point, was there any problem at all in that transaction?

A. No. It went through and she paid and left. Then she [359] returned again because I had forgotten to put the magazine in, the magazine for the gun. She came back and asked me, "Doesn't this gun come with a magazine?" And I said, "yes. I am sorry." Because at that show you had to take the magazines out, and I put it under the counter.

* * * *

[366] Q. Now, since that gun show you have not seen Ms. Ashford in any other gun shows?

A. No.

[367] Q. Do you recall seeing any of the young men that were with her at the gun shows after that?

A. No. And I have to admit, I didn't see them very well. They just—They weren't involved in anything. They looked like they were bored.

Q. They looked like they were bored at the gun show?

A. It is like when I used to go shopping with my mother—

* * * *

MS. HEATH: Q. And during either of the two transactions where Ms. Ashford was buying these firearms, did the young males seem to be the ones saying "Buy this one," or "I want this one"?

THE WITNESS: A. No.

Q. At any point did you feel that there was any indication that Ms. Ashford was buying the guns for somebody else?

A. No.

Q. Do you look out for that?

A. Yes because that is against the law. And the first question on the 4473 asks the person "Are you the actual buyer of the firearm?" If they indicate no, they are not, the sale can't proceed.

Q. Now, do you ever ask them what they are going to do with the guns or why they want these particular firearms?

A. No, because there is a lot of people they like different [368] types of guns. I have sold that same type of firearm to elderly gentlemen and younger people. It is not really my business what they are going to do with it. Most people go out and go shoot in the woods or something, or they go out there plinking. That is what you call it.

Q. The information that is provided to you by the customer on 4473 forms, is that information that you rely on in order make the transaction?

A. Yes.

Q. And is that information you rely on in order to keep your valid federally firearm license?

A. Yes.

MS. HEATH: Your Honor, pass the witness.

THE COURT: Mr. Jett?

CROSS EXAMINATION

By Mr. Jett:

Q. Mr. Kendrick, if you make a straw sale to somebody, you can lose your license. Is that right?

A. Yes.

Q. And if you knowingly sell a firearm to somebody who is prohibited, you also could lose your license. Is that right?

A. Right.

Q. Did you ask her for her social security number?

A. No, I didn't.

* * * *

[370] MR. JETT: Q. Now, you recall that there were three [371] young men with this lady at the time?

THE WITNESS: A. Well, there was two or three. I didn't—

Q. Were two of the—two of them of African descent?

A. African American descent; yes.

Q. And was there a third person of Hispanic descent?

A. Not that I know of. I thought they were all African-American.

Q. Can you describe the clothing?

A. No.

Q. Isn't it true that—Well, let me ask you this. Was this a busy gun show for you?

A. Yes.

Q. So you had a number of people at the table at a time?

A. Yes.

Q. So when you are helping one customer you can't help another customer?

A. Well, it took a while, before I could get to her because there were several other customers I had to help first.

Q. I understand that. But you are not watching her while you are helping another customer, are you?

A. No.

Q. You would be trying to focus on that particular customer?

A. Right.

Q. And you would also—If you were trying to make a sale [372] and calling the NICS information, you would be focusing on that?

A. Yes.

Q. So you couldn't say that you were observing her the whole time she was there at your table?

A. No.

Q. And you couldn't tell us what interaction there was or was not between her and these people that she was with.

A. No.

Q. And you couldn't tell us whether they were telling her what to buy or not telling her what to buy?

A. No, I couldn't tell you that, when I wasn't focusing on her.

Q. And you don't know whether they gave her the money to purchase the firearm, do you?

A. I don't know that either. If I wasn't observing her I wouldn't have known that.

Q. Now, I want you to think back. Do you remember that when she was filling out the form that there was one of these guys standing right there with her?

A. They were there, but they didn't have any interaction with her. Like I said, they just looked like they were bored.

Q. Now, when she came back, you said she wasn't carrying the first gun that was purchased. Is that right?

A. I don't remember offhand. I didn't see anything in her [373] hands. But she came back to ask about that delay, and at the time I didn't remember her because—I knew she looked familiar, and I said, "I thought I made the sale." And so I pulled it up and said, "No, you got a proceed and you received the firearm."

Q. Somebody wouldn't just leave a firearm just sitting around in the gun show, would they?

A. No. A lot of people just take them out to their cars and come back in. They get stamped on the hand so they can come back in.

Q. Or somebody else could be carrying it?

A. Yes.

Q. So it could have been carried by one of these people she was with?

A. Uh-huh.

Q. Now, when you weren't watching her and were watching these other customers, you can't tell us that one of these other people showed her what gun to pick out, can you?

A. No, I couldn't say that.

Q. Now, you said she came back a third time, and again there were no packages in her hand. Is that right?

A. I don't remember. I just remember the third time she came back and bought that Hi-Point carbine.

Q. You don't remember her—What was—Let me back up. What was the first firearm that was purchased?

[374] A. It was the MPA10, Masterpiece Arms.

Q. That is the big pistol with the clip on it?

A. Yes.

Q. And that would—I mean, how big a box does that come in?

A. The box is about this big. It comes apart and fits into little compartments in the cardboard.

Q. So you put your hands up. Is that about—

A. About a foot and a half maybe.

Q. Okay. Foot and a half square?

A. Just about. It is more of a rectangular shaped box.

Q. So about 18 by 16; something like that?

A. That would be close.

Q. So it would be pretty obvious if someone was carrying something that big around with them, wouldn't it?

A. Yes.

Q. And you don't remember her carrying something back when she came to see you the second and the third time?

A. No. I am sorry. I can't remember if she had it in her hand or not.

* * * *

[376] REDIRECT EXAMINATION

* * * *

[378] Q. And you indicated that on the second and third time that Ms. Ashford came back to the table, you do not recall whether or not she may have had a box that she placed down as she was looking at the next gun?

A. I don't recall that.

* * * *

MS. HEATH: Q. She didn't have the long box with the rifle, did she?

THE WITNESS: A. No, she didn't.

Q. Did she have any other packages with her that you recall [379] at this time?

A. No.

Q. Had she indicated whether or not she had already left the show and come back?

A. No.

* * * *

[384] GERALD CHANDLER,

TESTIFIED ON DIRECT EXAMINATION BY MR. McLAIN AS FOLLOWS:

* * * *

[385] Q. Do you work for somebody or do you have your own business?

A. I was working for Bill's Gun Shop. Mr. Carroll was the owner.

* * * *

[386] Q. On the 11th of January, did you ever have a customer by the name of Keshia Ashford come to you?

A. Yes, we did.

* * * *

[387] Q. Did she buy anything?

A. She attempted to make a purchase.

* * * *

[391] MR. McLAIN: Q. I will save you the trouble. We will move on to the next thing you noticed. After Mr. Carroll made the call, what was the next event that happened in this transaction?

THE WITNESS: A. The next thing that happened is Mr. Carroll passed it back to me and informed me that it was a delay.

Q. Did you all tell Ms. Ashford about that?

[392] A. Yes.

Q. What was her reaction?

A. She was upset about it. She stated that she had previously purchased weapons that day and she had not gotten a delay.

Q. Did you continue to handle this situation at that point?

A. At that point I told her that if she would check back in 30 minutes, that is what the normal procedure is—give them a little time, and sometimes they come back through as an approval. It is just a time thing. She was informed that she should come back.

Q. Did she go away—

A. She went away for a period of time and then came back, and at that point I passed it off to Mr. Carroll because she was very agitated about still being delayed.

Q. Did she get specific about what agitated her? Was it unable to get the weapon, upset about the fee that you kept?

A. At that point she didn't know about the fee.

Q. Okay.

A. It was still—We were still in a waiting period at that time. She was very agitated because of the fact that she had been approved previously that day, and she voiced that to us

that she had been, and wanted to know why we couldn't approve her; she had been previously approved.

Q. Was she alone during this time?

[393] A. There were two gentlemen, two young fellows I would say in their early 20s that were in the background.

Q. Can you describe them to the extent you can remember what they look like?

A. No, sir. They were—The only thing I can tell you is that I would say they were in their early 20s, black males, one was fairly thin. That is basically it.

Q. Did she have any interaction with them, or how did you know that she was with these two fellows?

A. Well, in the beginning I assumed that they were together, but when she walked away they followed her.

Q. Did they participate at all in her shopping or her execution of this transaction?

A. No, sir. That would be illegal.

Q. Meaning?

A. That would be what we would consider a straw purchase. Any time someone tries to purchase a weapon for someone who cannot, whether it be not old enough or not be able to pass the background check, any time that we see something like that happening we have to call the deal at that point because of the fact that it will get us in trouble for a straw purchase.

Q. Yes, sir. Did you see any indication of that the entire time you had contact with her?

A. No, sir.

Q. Did she seem to at all consult with them during the [394] process, even if they were with her?

A. No, sir.

Q. Did you notice anything about them about their behavior or what they were doing while she was busy working with you?

A. They were just standing in the background.

* * * *

[394] CROSS EXAMINATION

* * * *

[396] Q. You say when the lady came to buy the gun, it was apparent to you that she was with somebody. Is that correct?

A. Someone was with her.

Q. And when she arrived, did you have other customers there? When she arrived—

A. When she arrived? Possibly.

Q. You had other customers. You can't remember?

A. Sir?

Q. You can't remember if you had other customers?

A. I am sure—There is normally 3,000 to 5,000 people that come through the show, so it is possible there were other people milling around the tables; yes.

Q. And it is possible that there were people looking at guns that you also had to attend to?

A. No, sir. Once I am with a customer, they get my full attention.

Q. It is certainly possible she could have come by your table and then left and gone somewhere else.

A. It is possible.

* * * *

[399] Q. Now, when it came back delayed, did—How long did that take, first?

A. Three to five minutes.

Q. And when it came back delayed, was she still standing there or had she gone somewhere?

A. She was standing there waiting.

Q. And you told her it had been delayed, and she didn't like that apparently?

A. No, sir.

Q. At that point did the two young men she was with say anything?

[400] A. No, sir. They were still in the background.

Q. Did they all leave at that point, leave your table?

A. I believe there was a little bit of discussion about the delay, and then I instructed her to come back in about 30 minutes.

Q. Now, you are saying that you didn't see them before they arrived at your table. Is that right? Going back to the beginning of the transaction.

A. That I didn't—They weren't there together. Had I seen them previously at my table?

Q. Yes, sir.

A. No, sir, I hadn't seen them.

Q. And you hadn't seen any of the interaction between them before they got to your table?

A. No, sir.

Q. So you couldn't tell us what may have been said between them. Is that right?

A. No, sir.

Q. You couldn't tell the jury how the decision was made to purchase that particular firearm.

A. No, sir.

Q. And you couldn't tell us who actually made the decision to buy that firearm, could you?

A. All I know is what was told to me.

Q. I understand that. Now, after the three of them left [401] after the delay, did they come back after a while?

A. Yes, sir, they did.

Q. Did all three of them come back?

A. Yes, sir.

Q. And was there a discussion among all three of them and you and Mr. Carroll about the delay?

A. No, sir.

Q. Do you remember that the two young men engaged in a discussion about the delay with the two of you?

A. No, sir. I passed it off. When she came back she was very agitated, and I passed it off to Mr. Carroll.

Q. So you didn't deal—

A. I stood by, but no, I was not involved with the conversation.

Q. But you observed that the two young men participated in the conversation, didn't you?

A. No, sir, I didn't.

Q. Can you give us any further description of these two young men?

A. No, sir. They were not part of the transaction. They were not—They were of no concern of mine.

Q. So you really weren't paying any attention to them?

A. Other than the fact that I observed them in the background; no; and the fact that they did not have any interaction with the purchaser.

* * * *

[402] REDIRECT EXAMINATION

Q. Just to be clear, when you said these young guys didn't have any interaction with the purchaser, you mean whom?

A. Ms. Ashford.

Q. Thank you, sir. And regarding Mr. Jett's other point, from what you observed, was anybody but Ms. Ashford involved in deciding on which weapon she should get and what information she should put on the form and all other aspects of this purchase?

A. No, sir. As I stated previously, that would have null and voided the transaction. For the small amount of money I make on a sale of a firearm, it is not worth the penalties for me as far as me breaking the law for a straw purchase.

Q. If you sensed that these young men were involved in the decision-making or urging her on to make certain decisions, what would you have done?

A. I would have called the deal at that point. I would have told her that I could no longer carry out the transaction.

Q. Did you have the authority at that time to do that?

A. Yes, sir.

* * * *

[403] RECROSS EXAMINATION

* * * *

Q. Is Bill's Gun Shop known for being a stickler about making sure a transaction is not a straw transaction?

A. Yes, sir.

Q. Do you think you have that reputation among the dealers?

A. Yes, sir.

Q. Now, if somebody was to come up to you and say, "Well, I am buying this, but it is a gift for my friend here," would that be a straw transaction to you?

A. Yes, sir.

Q. So you think that somebody has to make it very clear to you that the buyer is buying the gun for himself or herself?

A. It is one of the questions on the form. The first question, paraphrasing, I believe is, "Are you the actual purchaser of this firearm?"

Q. So if somebody told you, "I am going to make a gift of this to somebody," you would say, "We can't do that"?

A. If the person is standing there, no. If it is a gift, that is within the realm of the law.

* * * *

[404] THOMAS CARROLL,

TESTIFIED ON DIRECT EXAMINATION BY MR. McLAIN AS FOLLOWS:

* * * *

Q. Mr. Carroll, what do you do for a living?

A. I used to run a gun shop. I just retired recently.

* * * *

[406] Q. Did you do a show on the 11th of January this year?

A. This year?

Q. Yes, sir.

A. Yes.

* * * *

Q. On that day do you recall if you had any transaction involving a customer by the name of Keshia Ashford?

A. Yes, sir.

* * * *

[408] Q. What is that you are holding, please?

A. This is the federal transaction form we call a 4473, or the yellow sheet. The customer fills out the front with identifying information that we use when we call in to the federal system to get a background check.

The backside of the form we fill out, which designated the location, the date, the identification used, which is driver's license, driver's license number. When we call the FBI they give us a transaction number that is a unique number we put in here. And depending on what response they give us, we mark the form over here. In this case the initial response was delayed.

* * * *

[410] Q. What does all that tell us in a nutshell from 19a to 19c?

A. It tells us the background check was submitted, the identifying number was given, and the initial response was that the transaction would be delayed.

* * * *

Q. Did you inform Ms. Ashford of the delay right away?

A. Yes.

Q. What was her reaction, if anything?

A. As I remember at the time she said, "Well, what does that mean?" And I said, "Well, it means that for some reason they have delayed the approval. It could be anywhere from a couple of minutes to three days before we get an answer back one way or the other."

Q. Did she have a response to that?

A. I think she just said, "Well, what should I do?" And I [411] said, "Just check back with us in a about half an hour."

Q. Did she do that?

A. Yes.

Q. What happened when she came back?

A. I believe that is when she first came back and she said, "Have you got any response yet?" And I said, "No, but I will call them again right now and see if there has been an update."

Q. What happened when you called them back?

A. They said it was still delayed.

Q. What happened when you told Ms. Ashford that that was still the situation?

A. Well, she at that time said, "What is going on here, because I just bought a gun from another dealer here in the show and that it was not delayed?" And I said, "That doesn't sound right. I have never heard of that happening before."

Q. Was she very calm and rational at that point?

A. Yes.

Q. Okay.

A. You know, she was saying you know, "What is going on?"

Q. Anything else she had to say about it?

A. Well, yes. And I said, "Well, I will tell you what. I have never heard of this happening before. If you can go back to that other dealer and get this transaction number he got on his form, that will be different than the one I have, and I will call them back and ask them just what is going on here, [412] because this is very unusual." And she said, "Okay." And I never thought I would see her again. But within a few minutes she came back and she said, "Here is that number."

* * * *

Q. Did you do anything different with that number she came back that she claimed was an approval number?

A. Yes. I called back to the FBI system and asked to talk to an agent, and I said, "Something weird is going on here." I said, "This lady who is trying to buy a firearm from me got delayed, but she just went over at a gun show where we are and bought another firearm from another dealer and was not delayed." And I said, "I have that transaction number." And he said, "Well, let me have it and I will check it." So I did.

* * * *

[413] MR. McLAIN: Q. Mr. Carroll, you had this discussion with him, and then after you had the discussion with the fellow on the phone, what did you tell Ms. Ashford?

THE WITNESS: A. Well, I told her that he told me that it was because we got her social security number.

* * * *

THE WITNESS: A. I told her that the man on the phone said that because her social security number was given on my form and where it wasn't on the other dealer's form, that resulted in a delay.

Q. What kind of reaction did she have to that?

A. Well, she said she would wait a little while and check back a little later was her response at that time.

Q. Did she leave or did you have some more interaction with her?

A. She left at that point.

Q. Then what happened?

A. She came back about 20, 30 minutes later and said, "Well, has it been approved yet?" And I said, "No, and when it goes this long it will probably not be approved until Monday." So she said that she decided that we were ripping her off because, you know, she says, "I can buy a gun anywhere in this show [414] except for you." And I said, "My

hands are tied. I can't sell you a gun without getting an approval. That is the way this system works as far as I am concerned."

So we gave her back her money, less a transaction fee, which we have posted on a sign that once we start a process—This is not a clearing house for people's background checks. We must have money in hand, a receipt written, for the transaction to proceed beyond the initial point. So we say "If you back out or if you get denied, then you are going to forfeit $15 of the money you put up." So we gave her back all of her money except for $15.

Q. What further things did she have to say or reactions did she have, if anything?

A. She was mad. She didn't understand why I couldn't sell her the gun she wanted when she got some other guns from someone else.

Q. What sort of things did you try to do or say to her?

A. Well, I just told her that this is—I told her, I said—I repeated the fact that the social security number evidently made a difference in how they could clear her name, and I don't know anything about that and I will never know, because that is all confidential information. We never know why someone is delayed, denied, or whatever happens to them. But I said, you know, "I just can't do anything else other than give you your money back and say I am sorry."

[415] Q. What was her mood or behavior like at this point?

A. Well, she was still mad, you know, because again, she reiterated the fact that she thought we were doing something since we kept $15 of her money, she still thought—I thought that she thought she was getting the short end of the stick here; it was a scheme by us to just get $15 off of her. And she couldn't understand why if she paid for the gun why couldn't she get it.

Q. Yes, sir. Was she alone during this time?

A. She was alone as far as any transactions. When she came back the second or third time, I thought there were perhaps two men in the background that I don't know if they were either holding packages or just back there with her. They never got into the conversation at all. They never participated in any words to me.

Q. Okay. I would like to talk about what, if anything, you observed about them. Did you see what they were holding?

A. Not really, except the one thing that she showed me when she came back and said, "I bought this gun," it was a pistol and I saw the box and bag. I recognized the fact that it was a handgun. I didn't know what it was or what kind.

Q. Did you ever see them holding that same pistol?

A. Not that I recall, though she didn't have it with her when she came back the second time.

Q. Do you recall the ages or what you took to be the ages of [416] these young men?

A. I would say they were probably early 20s at the most.

Q. Race, build?

A. They were both black, medium. There wasn't anything outstanding about their physiques.

Q. Did they have any interaction with her, talk to her, consult with her, or anything?

A. Not that I saw. As I say, they were just standing in the background, and the only thing that made them stand out is that they were back there watching us talk. And I was aware that they were there and I thought, "Hmm, we are going to have three or four people getting into this thing." But they never even approached the table really.

Q. What told you they were with her other than they were kind of standing around?

A. When she came up I looked up and was talking to her, and then they were there, and when she left they were gone. And the other thing is that in a lot of gun shows, there aren't a lot of black people in the shows as a rule, although, you

know, there are quite a few that come from time to time. But usually they do come two or three people together sometimes.

Q. Yes, sir.

A. They just stand out slightly in a crowd.

* * * *

[418] CROSS EXAMINATION

* * * *

Q. I just have a couple of questions for you. It seems like from your testimony it is apparent that the young lady didn't really get upset with you until it was apparent she was going to lose the $15.

A. Somewhere along that way; yes.

Q. And it also became apparent at that time that there wasn't [419] going to be a gun purchase?

A. Correct. From me; that is right.

Q. Is it the policy of your business to ask for social security numbers?

A. We tell the customer when they fill out the yellow sheet that if they do not give their social security number, and they are not required to, that it may result in a delay in their approval, because that is a locator that the FBI system uses.

Q And the lady who purchased the gun was told this?

A. Yes.

Q. So from that it would be reasonable to believe that she understood that the number enhanced the chance that she would not be able to buy a gun.

A. Not necessarily. We told them it would enhance the fact that she could buy the gun. They would be able to find her in the system easier.

Q. But also it would—It also might enhance the fact that somebody might not be able to buy a gun because it would get cross-referenced with other information.

A. Perhaps.

Q. Mr. Chandler worked for you. Is that right?

A. Correct.

Q. Did he also have a federal firearms license?

A. No.

Q. Did he used to have one?

[420] A. I believe he did years ago; yes.

Q. Do you know why he doesn't have one now?

A. He didn't have a business.

Q. It was—You do remember that these young black men were there and they were holding some kind of packages?

A. Yes.

Q. And you said you saw Ms. Dixon or Ms. Ashford about four times?

A. Yes, I think so.

Q. And each time she did not have a package with her?

A. The first time she came back she did.

Q. And the other three times she did not have a package?

A. I don't think so, but I am not positive.

Q. But you saw these guys lurking off in the background and they were carrying packages?

A. They were standing back there, and I think they had a couple of packages.

* * * *

[421] JOHN COLLINS,

TESTIFIED ON DIRECT EXAMINATION BY MS. HEATH AS FOLLOWS:

* * * *

Q. And with regard to the sporting goods business, does that include selling guns?

A. Yes. I am a federally licensed firearms dealer.

* * * *

Q. Did you work for other companies or do you have your own company?

[422] A. I work for myself.

* * * *

Q. With regard to selling firearms, let me direct your attention back to January 4th of 2003 and ask if you attended the gun show at the Dallas Market Hall?

A. Yes, ma'am.

* * * *

[423] Q. During the January show at Market Hall, did you have an occasion to sell a firearm to a Keshia Cherie Ashford?

A. Yes, ma'am.

* * * *

[424] Q. Could you tell the jury a little about what you recall on that day when this customer came to your table?

A. She walked up, pointed to a gun and said, "That is the one I want." And I said, "Step over here, do your paperwork." I Handed her the form, she filled it out, I called NCIC, and got a proceed, she paid for the gun, and left.

Q. Was there anybody else with her at the time?

A. Yes. There were two young men that were with her.

Q. Approximately how old were these young men?

A. They were 18 to 25.

Q. Did you see them have any interaction with her during the purchase of this firearm?

A. Not with her. They were chatting to each other behind her while she did the paperwork.

Q. And how far away from her would they have been, or how far away from your table would they have been at that time?

A. Standing right behind her.

Q. Did she seem to consult with them at any point about what [425] gun she wanted, the price of the gun, any characteristics of the gun, anything of that sort?

A. Nothing that I noticed.

* * * *

[426] Q. In what type of container did you sell the gun to Ms. Ashford?

A. It would have been in a hard case.

Q. And when she came up to purchase the gun, did she look at any other guns but that gun?

A. No. When I interact—When our interaction began, she said, "I want that one," and pointed to it.

Q. So you did not notice if she was shopping around at all at your other tables looking at other guns?

A. No, I didn't notice it.

* * * *

[432] Q. And if we go back to page three, "important notices," paragraph one, does that paragraph explain when you are allowed to buy the firearm as a gift for somebody, but distinguishing between buying the firearm just for somebody else when they give you money?

A. Correct. That would be a straw purchase, and we are prohibited from doing that.

Q. Do you keep an eye out for straw purchases when you are selling firearms?

A. Yes, ma'am.

Q. And has it happened before that you realize that a straw purchase was happening and you declined to sell the firearm?

A. Yes, I have declined sales because the gun was not for the person filling out the paperwork.

Q. Did you have any reason to believe in the purchase of the gun by Ms. Ashford that she was buying the gun at the behest of somebody else using somebody else's money?

A. No, ma'am.

* * * *

[433] CROSS EXAMINATION

* * * *

Q. Now, you say that you do remember that there were a couple of young African-American men with a lady who bought the gun. Is that correct?

A. Yes, sir.

Q. And they were standing right there next to her?

A. Yes, sir; right behind her.

Q. They could hear all of your conversation?

[434] A. Yes.

Q. And they could observe the entire transaction?

A. Yes, sir.

Q. And so apparently somebody had already made a decision to buy this Tec-22 gun. Is that right?

A. Yes, sir.

Q. Because your testimony has been there wasn't any discussion that you heard about what to buy.

A. No. She walked up and said, "I want that one."

Q. Had you seen these people before at the gun show?

A. No, sir.

Q. When she filled out the form, were these two guys standing right there with her?

A. Behind her; yes, sir.

Q. So they could see what she was doing?

A. Yes, sir. And it is pretty open.

Q. Could you see one of them give her some money to buy the gun with?

A. No, sir.

Q. That certainly could have been done without you seeing it, couldn't it have?

A. I am sure it is possible.

Q. Certainly could have been done before they got to your table?

A. Sure.

[435] Q. And you wouldn't have known anything about it?

A. Correct. If I had known anything, I would have asked questions.

* * * *

[477] it is all about control.

And what you are going to hear is a story about power and control from the people who were there, who were in the middle of it. And you are going to hear expert testimony about what that does to people and how people react and what that did to Keshia Ashford that led her to be here today and this week. Thank you.

THE COURT: Thank you. First witness?

MR. JETT: We will call Ve'Queshia Ashford. Should I go get her, Judge?

THE COURT: Yes, sir.

(Whereupon, the oath was administered by the Court)

Ve'QUESHIA ASHFORD,

TESTIFIED ON DIRECT EXAMINATION BY MR. JETT AS FOLLOWS:

Q. Would you state your name, please?
A. Ve'Queshia Ashford,
Q. You have more than two names, don't you?
A. Yes, sir.
Q. What is your whole name?
A. Ve'Queshia Andrea Leketha Nicole Ashford.
Q. And what do you go by?
A. Queshia.
Q. Okay. Can you pull the mic a little bit closer to you? Thank you. How old are you, Queshia?
A. Sixteen.
[478] Q. Where do you live?
A. In Greenville, Texas.
Q. Who do you live there with?
A. My grandmother and my grandfather.
Q. And who else?

A. And my aunts and my sisters and brother.
Q. Okay, How many sisters do you have?
A. Two.
Q. What are their names and ages?
A. Joycelyn, she is 14, and Divinity, she is ten.
Q. And who else lives there?
A. My aunt.
Q. Who is that?
A. Alicia.
Q. Okay. And she has some children who live there?
A. Yes, sir.
Q. Are those the two little boys out in the hall?
A, She has a son and a daughter.
Q. Okay. Do you go to school?
A. Yes, sir.
Q. Where do you go to school?
A. Greenville High School.
Q. What grade are you in?
A. Eleventh.
Q. Are you involved in any school activities?
[479] A. I run track.
Q. What do you run?
A. 100, 200, sprints and jumps.
Q. Okay. Do you know this lady right back here?
A. Yes, sir.
Q. Who is that?
A. My mama.
Q. And when did you go to live with your grandmother?
A. In February of 2003.
Q. Okay. Before that time, had you always lived with your mom?
A. Yes, sir.
Q. Okay. Do you know—Can you tell the jury why you went to live with your grandmother?
A. Because my mama had to go serve her sentence.

Q. Now, at the time that your mom had to go serve her sentence, where were you living?

A. In Dallas.

Q. Can you tell—Do you remember the name of the apartments or the location?

A. Off Forest Lane.

Q. Is that on Forest Springs?

A. Uh-huh,

Q. And was that a two bedroom apartment?

A. Yes, sir.

[480] Q.Okay. Do you know a person by the name of Thomas Earl Wright?

A. Yes, sir.

Q. And does he have a nickname?

A. Yes, sir.

Q. And what is his nickname?

A. Pacman.

Q. And when did you meet him?

A. In August of 2002.

Q. Okay. Did he become your mom's boyfriend?

A. Yes, sir.

Q. Had she known him before and she just met him around that time?

A. Met him around that time.

Q. Can you tell the jury how they got along at first?

A. Fine.

Q. when they first met, where did you all live?

A. In Hyde Park.

Q. Do you know that address?

A. On Melody Lane.

Q. And is it near any larger streets that we might know of?

A. Skillman. It is like off Skillman.

Q. Skillman and Abrams?

A. Yes, sir.

Q. Did your mom and Pacman get along pretty good for a while?

[481] A. Yes, sir.

Q. Did that change?

A. Yes, sir.

Q. About how long after they started seeing each other did that change?

A. Not long; maybe a couple of weeks.

Q. And how did that relationship change?

A. He became abusive towards her.

Q. When you say "abusive," what do you mean?

A. He would hit her, and he would make her stay at home, and things like that,

Q. When you say "stay at home," how would he make her stay at home?

A. He would take her car where she wouldn't be able to leave.

Q. When he hit her, where did he hit her?

A. On her arms and her legs, and sometimes on her chest.

Q. Okay. Were these places where clothes would cover them up?

A. Yes, sir.

Q. Did they have argments?

A. Yes, sir.

Q. What did they have arguments about?

A. Little things. This is the smallest, like clothes she wore, or if she wanted to go somewhere.

Q. Did they have bigger arguments, too?

A. Yes, sir.

[482] Q. At some point did they break up?

A. Yes, sir.

Q. Do you remember about when that was?

A. Towards the end of November and beginning of December.

Q. And did they then get back together?

A. Yes, sir.

Q. Now, did he ever really quit coming around?

A. No, sir.

Q. In December did you all move?

A. Yes, sir.

Q. And where did you move to?

A. The apartments that we were staying in before we moved to Greenville.

Q. And what kind of apartment did you move into?

A. A two bedroom.

Q. What kind of apartment had you been living in before?

A. One bedroom.

Q. How did you all get moved?

A. They, Pacman, Hookie, and Derek moved us.

Q. Now, Pacman is Thomas Earl Wright. Who is Hookie?

A. Cory.

Q. Do you know his last name?

A. I don't know his last name.

Q. Does the name Cory Sanders ring a bell to you?

A. Yes, sir.

[483] Q. Okay. And who is the third guy?

A. Tyshon. Not Tyshon. Derek, I am sorry.

Q. And they helped you all move. Is that right?

A. Yes, sir.

Q. And after you all moved, did Pacman come to live with you?

A. Yes, sir.

Q. Was he there all the time?

A. Yes, sir.

Q. Did the arguments continue?

A. Yes, sir.

Q. Did they get better? Did they get worse?

A. Worse.

Q. How did they get worse?

A. He would—It would be instead of like actually having a reason to argue, it would be over little smaller things, like maybe something she cooked or something.

Q. Would there he any real reasons to argue?

A. No, sir.

Q. Would he hit her?

A. Yes, sir,

Q. Where would he hit her?

A. Same places--her arms, legs, chest.

Q. Did you see him hit her?

A, Yes, sir.

Q. Did she have the same bruises or did she get new bruises?

[484] A. New bruises.

Q. Now, after he moved in, was she free to go anywhere she wanted?

A. No, sir.

Q. why not?

A. He wouldn't let her leave.

Q. And how did he keep her at home?

A. He would take her car, or if he left in his car he would take her keys.

Q. Okay. What about money? Did Pacman over get money from your mom?

A. Yes, sir.

Q. Was this a regular thing or could you tell?

A. Regular.

Q. Did your mom appear to be scared of him?

A. Yes, sir.

Q. Okay. Let's talk about—Let's go to January of this year, and I want to ask you, do you remember there being talk about a gun show?

A. Yes, sir.

Q. And do you remember somebody coming home from a gun show?

A. Yes, sir.

Q. Were you there at the apartment during the day?

A. Yes, sir.

Q. And was anything brought home from the gun show?

[485] A. Yes, sir.

Q. What was brought home?

A. Hookie brought a gauge and Pacman had a Tec.

Q. What is the gauge? Do you know?

A. It is like a shotgun.

Q. And had you ever seen these guns before?

A. No, sir.

Q. Did your mom bring them in?

A. No, sir.

Q. Who did the guns belong to?

A. Pacman and Hookie.

Q. Now, did one of the—Did the Tec have a special characteristic?

A. Yes, sir.

Q. What was that?

A. A red laser.

Q. Let me show you something that the jury has seen, but ask you, did it kind of look like this?

A. Yes, sir.

Q. And what would he do with the gun and laser?

A. He would point it at people, and he would ask questions like, "What do you know about this red dot?"

Q. Who did he point it at?

A. He pointed it at my mom and my sister.

Q. Did your mom ever carry the gun around?

[486] A. No, sir.

Q. Did you ever see her with it?

A. No, sir.

Q. After this first gun show, did Pacman continue to hit your mom?

A. Yes, sir.

Q. Was she able to go places?

A. No, sir.

Q. Now, was Pacman nice to you?

A. No, sir.

Q. Did you hear about another gun show?

A. Yes, sir.

Q. Did you see evidence that somebody went to that gun show?

A. Yes, sir.

Q. What did you see?

A. A.D. had a gun, but I can't remember if anybody else had one.

Q. But you remember your mom going off somewhere a week later on the 11th?

A. Yes, sir.

Q. Were you and Joycelyn at home?

A. Yes, sir.

Q. Was anybody else with you?

A. A friend of mine.

Q. And when you—After the gun shows, did you all go to [487] church?

A. Yes, sir.

Q. Was that a regular thing that your family did?

A. It was kind of regular.

Q. After the gun shows, did somebody go with you all to church?

A. Yes, sir.

Q. Who was that?

A. Rookie.

Q. Now, this was on Sunday, I assume?

A. Yes, sir.

Q. So before January had Rookie ever gone to church with you all?

A. No, sir.

Q. Did Hookie appear to go for religious reasons?

A. No, sir.

Q. During the time your mom lived or Pacman was living there in late December and January, was your mom afraid of him?

A. Yes, sir.

Q. Were you afraid of him?

A. Yes, sir.

Q. Did you see your mom play with those guns?

A. No, sir.

Q. Did you see any evidence that they belonged to her?

A. No, sir.

[488] MR. JETT: Pass the witness,

THE COURT: Ms. Heath?

MS. HEATH: Yes, Your Honor.

CROSS EXAMINATION

By Ms. Heath:

Q. Hello, Ms. Ashford.

A. Hello.

Q. Do you remember me? My name is Candy Heath.

A. Yes, ma'am.

Q. Now, let's see. You mentioned you were 16. Is that correct?

A. Yes, ma'am.

Q. And your sister Joycelyn is 14, and your sister Divinity is ten?

A. Yes, ma'am.

Q. Divinity's father is Ted Dixon. Is that correct?

A. Yes, ma'am,

Q. And in fact, you and Joycelyn, and Divinity and your mom all lived with Ted Dixon for eight or nine years while they were married.

A. Yes, ma'am.

Q. And after the divorce, Ted would occasionally come by on weekends and take all of you out. Is that correct?

A. No.

Q. And in fact, on his visitation with Divinity there would [489] he occasion when Joycelyn would go with him and occasions when you would go.

A. Yes, ma'am,

Q. And sometimes—

MR. JETT: Excuse me, Judge. Rased on pretrial rulings, I am going to object to this, the discussion about Ted Dixon.

THE COURT: I am not sure where she is going. She hadn't gotten into the area we discussed, so go ahead, Overrule that objection.

MS. HEATH: Q. And there have been occasions when your mom has called upon Ted Dixon to help pick one of you up at school or take one of you to school on occasions when she was not able to do it in the past.

THE WITNESS: A. Yes, ma'am.

Q. And in fact, while your mom has been in jail, Ted Dixon has still continued to come to visitation to pick up Divinity. Isn't that correct?

A. Yes, ma'am.

Q. And it is almost every weekend.

A. Yes, ma'am.

Q. In fact, Ted Dixon will take your sister Divinity to the jail to visit your mom.

A. Yes, ma'am.

Q. Your mom is about 35 years old?

[490] A. Thirty-six.

Q. Thirty-six? And during the time that these guns were purchased in January, she was 35.

A. Yes, ma'am.

Q. Now, you mentioned Pacman. Did you know his real name initially, or did you always know him as Pacman?

A. As Pacman.

Q. And Pacman, when he first met your mom, was 20. Isn't that correct?

A. I don't know.

Q. Isn't he about 21 right now or so?

A. I don't know,

Q. And Cory, the person you called Hookie, isn't he about 24? He is in his early 20s as well?

A. Yes, ma'am.

Q. And Tyshon that you mentioned earlier, isn't he also in his early 20s?

A. Yes, ma'am.

Q. You mentioned that you are currently living with your grandma and your grandfather in Greenville.

A. Yes, ma'am.

Q. Your grandmother is Sheryl Jimmerson?

A. Yes, ma'am.

Q. And they have lived in Greenville for a long time, have they not?

[491] A. Yes, ma'am.

Q. And you have another grandpa that lives in Greenville also. Isn't that right?

A. Yes, ma'am.

Q. Is that because your grandmother remarried?

A. Yes, ma'am.

Q. And you have seen them on occasion over the past several years?

A. Yes, ma'am.

Q. In fact, your mom I believe graduated from Greenville High School?

A. Yes, ma'am.

Q. Is that the school you are going to right now?

A. Yes, ma'am.

Q. Now, the whole time that your mom has known Pacman, has she actually been dating him as her boyfriend or have there been other people?

A. Him only.

Q. It is only him?

A. Yes, ma'am.

Q. And prior to Pacman, or between the marriage of Ted Dixon and Pacman, there have been other boyfriends?

A. Yes, ma'am.

Q. And in fact, your father is Harold Humphrey. Is that correct?

[492] A. Yes, ma'am.

Q. And your sister Joycelyn's father is Sedrick Dixon?

A. Yes, ma'am.

Q. And Sidrick Dixon is not related in any way to Ted Dixon?

A. No, ma'am.

Q. Just a coincidence that their last names arc Dixon?

A. Yes, ma'am.

Q. The apartment that you lived in on Melody Lane, did you initially move there with your mom and anybody else?

A. No.

Q. Did an individual by the name of Tabyrai Sweat or nicknamed Tiger ever live there?

MR. JETT: Excuse me, Judge. I am going to object. This is not relevant.

THE COURT: Overrule the objection_ Go ahead.

MS. HEATH: Q. Prior to the Melody Lane address, did you live with a Tiger and his mother Beverly on Abrams?

THE WITNESS: A. We lived with Tyke on Skillman and Kingsley.

Q. Skillman and Kingsley?

A. Yes, ma'am.

Q. Did his mother live there also, Beverly Sweat?

A. She came to stay after she had a conflict in her apartments.

Q. And approximately how old is Beverly?

[493] A. I don't know.

Q. The two bedroom apartment you moved into in Forest Springs, one bedroom was your mother's and one bedroom the three girls shared. Is that correct?

A. Yes, ma'am.

Q. And Pacman would come and go. He was not there on a regular basis?

A. He was there on a regular basis depending on—

Q. I am sorry. Go ahead.

A. Depending on—Sometimes ho would be there on a regular basis and sometimes he would just come and go.

Q. But he didn't keep all his clothes there, He had another location.

A. Yes, ma'am.

Q. En fact, he had a location on Peavy goad. Is that correct? On Peavy, is that—Where did his children live?

A. I am not for sure.

Q. Now, for the apartment on Forest Springs, your mother had a key to the apartment. Isn't that correct?

A. Yes, ma'am,

Q. And she gave a key to the apartment to Pacman?

A. Yes, ma'am.

Q. She never got that key back from Pacman, as far as you know?

A. No.

[494] Q. Did you and your sisters have a key to the apartment?

A. No, ma'am.

Q. While you were living or prior to your living on Forest Springs when you were living on Melody Lane, you enrolled in Bryan Adams High School?

A. Yes, ma'am.

Q. And Pacman was your emergency contact at that school. Isn't that correct?

A. Yes, ma'am.

Q. And then after the Bryan Adams High School, you left there in December of 2002.

A. Yes, ma'am.

Q. And in January 2003 you enrolled at Lake Highlands High School?

A. Yes, ma'am.

Q. And Pacman was still your emergency contact for that location?

A. Yes, ma'am.

Q. Now, to get to school, your mom would drive you to school.

A. No, ma'am.

Q. And drive your sisters to school?

A. No, ma'am.

Q. How did you get to school?

A. I rode the bus and I walked. My baby sister got to school because Z walked her, and my other sister walked to school.

[495] Q. Weren't there some occasions when going to Bryan Adams that Ted Dixon would either come and pick you up or drop you off at school?

A. No, ma'am.

Q. You mentioned that you heard about the first gun show at Market Hall, or the first gun show that everybody went to, and you know your mom went to the gun show?

A. Yes, ma'am.

Q. And you know that Pacman went to the gun show?

A. Yes, ma'am.

Q. You know that Pacman's sister went to the gun show?

A. Yes, ma'am.

Q. And you know that Rookie went to the gun show?

A. Yes, ma'am.

Q. And in fact, your mom and Pacman's sister went in one car?

A. I don't know how they got there.

Q. And Pacman and Hookie went in another car.

MR. JETT: Excuse me, Judge. She is making a statement about things that aren't in evidence.

THE COURT: She may ask. She may ask if she knows.

MR. JETT: It didn't sound like a question. it sounded more like a statement.

THE COURT: Overruled. It is a question.

MS. HEATH: Q. Did you know that they went in separate cars to the gun show?

[496] THE WITNESS: A. No, ma'am.

Q. And when they came back from the gun show, your mom came back alone first in her oar?

A. Yes, ma'am,

Q. And that was prior to Pacman and Hookie arriving.

A. Yes, ma'am.

Q. And on that occasion you are at home?

A. Yes, ma'am,

Q. When your mom arrives?

A. Yes, ma'am.Q

Q. Are your sisters there with you?

A. Yes, ma'am.

Q. Do you have any friends there or your sister's friends there?

A. No, ma'am.

Q. Anybody else there at the apartment?

A. No, ma'am.

Q. So it is just the four of you at the apartment?

A. Yes, ma'am.

Q. And everybody waits, and ultimately Pacman arrives.

A. No, ma'am. Farrah had came because we were supposed to be having a get-together that day.

Q. That is Farrah Pooler?

A. Yes, ma'am,

Q. That is Pacman's sister?

[497] A. Yes, ma'am.

Q. So she came to the house also?

A. Yes, ma'am. And Farrah got into an argument with T.K., and so she called Pacman and then Pacman came.

Q. And do you know T.K.'s real name?

A. No, ma'am.

Q. And T.K. is also in his early 20s. Is that correct?

A. I am not for sure.

Q. Now, when everybody arrived, at some point you saw guns on that occasion.

A. Yes, ma'am.

Q. And which guns did you see during that occasion?

A. The gauge, and then I saw the box that Pacman kept his gun in, he kept his Tec in.

Q. What kind of box was that?

A. A black box.

Q. Like a hard plastic box?

A. Yes, ma'am.

Q. I am going to hold up Government's Exhibit No. 37. Did it look like this box?

A. Yes, ma'am.

Q. And so this was in your apartment, which was on Forest Springs where you lived with your mom?

A. Yes, ma'am.

Q. And he was taking the gun out and playing with it?

[498] A. Yes, ma'am.

Q. And there was also a shotgun?

A. Yes, ma'am.

Q. And were there some shotgun shells for it?

A. Yes, ma'am.

Q. Do you know who bought the shotgun shells?

A. No, ma'am.

Q. Did you see anybody loading the Tec, the gun that came out of Government's Exhibit No. 37?

A. No, ma'am.

Q. Now, during that week you are on vacation from school? Was that a holiday from school that week?

A. The week before the first gun show?

Q. The week before the first gun show.

A. Yes, ma'am.

Q. But after the first gun show did you go back to school?

A. Yes, ma'am.

Q. So you have to go back to school on a regular basis; it starts back up?

A. Yes, ma'am.

Q. And that is Lake Highlands at this time?

A. Yes, ma'am.

Q. And your sisters are both going to school?

A. Yes, ma'am.

Q. Either at Bryan Adams or at Lake Highlands, you never tell [499] any of your teachers that there is problems at home.

A. No.

Q. You never tell any of your counselors at school that there is problems at home?

A. No, ma'am.

Q. During December of 2002 and January of 2003, you don't tell your grandmother or either of your grandfathers that there are any problems at home?

A. No, ma'am.

Q. And to your knowledge your mom isn't telling anybody?

A. No, ma'am.

Q. And Ted Dixon is still having visitation with at least Divinity at this time?

A. Yes, ma'am.

Q. And nobody is telling Ted Dixon there is problems at home?

A. No, ma'am.

Q. During the week between the two gun shows, you and your mother and your other sisters didn't make any effort to move out of the apartment, did you?

A. No, ma'am.

Q. You didn't go to the apartment manager and say, "We need to change the locks on our apartment"?

A. No, ma'am; not to my knowledge.

Q. Or you never went to the apartment manager to say, "We need to move to a new apartment"?

[500] A. No.

Q. Your mom never grabbed you all and jumped in the car and said, "We have got to get out of here"?

A. No.

Q. Go to grandma's or grandpa's or Ted Dixon?

A. No.

Q. Or Beverly Sweat?

A. No, ma'am.

Q. You talked about knowing that there was a second gun show that everybody went to.

A. Yes, ma'am.

Q. And your morn went to that gun show?

A. Yes, ma'am.

Q. Pacman goes to that gun show?

A. Yes, ma'am.

Q. Hookie goes to that gun show?

A. No, ma'am.

Q. A.D. goes to that gun show?

A. No, ma'am.

Q. And do you know A.D.'s real name?

A. Roderick.

Q. Roger what?

A. Roderick. T don't know his last name.

Q. Roderick?

A. Yes, ma'am.

[501] Q. And did you date Roderick for a while?

A. Yes, ma'am.

Q. And he is your boyfriend, or he was your boyfriend at the time?

A. Yes, ma'am.

Q. So your boyfriend goes with Pacman and with—And how old is Roderick?

A. Nineteen.

Q. And you don't know Roderick's last name?

A. No, ma'am.

Q. Do you know where Roderick lives?

A. Just I know he was staying in an apartment on Kinglsey?

Q. Do you remember talking to me before in March of this year, 2003?

A. Yes, ma'am.

Q. And do you remember not knowing A.D.'s name at that time?

A. Yes, ma'am.

Q. Did you know A.D.'s name then?

A. No, ma'am.

Q. You just learned what his name was recently?

A. Yes, ma'am.

Q. Now, when everybody comes back from the second gun show, what guns do you see?

A. I know A. D. had one, and I know that there was two black guns but I can't remember if they came from the first or the [502] second.

Q. Do you know what kind of black gun A.D. had?

A. His was silver.

Q. And how was it shaped?

A. It was like a handgun, but it was a little bigger.

Q. If we can show Government Exhibit No. 52 on the screen. Did it look sort of like that?

A. Yes, ma'am.

Q. And that was A.D.'s gun?

A. Yes, ma'am.

Q. In fact, A.D. kept that gun with him, didn't he? I mean, he left the apartment with it. He didn't leave it there at the apartment.

A. Yes, ma'am.

Q. You mentioned that you saw some other guns, but you weren't sure whether they came from the first gun show or not?

A. Yes, ma'am.

Q. which guns were those or what did they look like?

A. They were black handguns.

Q. clack handguns?
A. Yes, ma'am.
Q. And how many of them were there?
A. Two.
Q. Did they look the same?
A. Yes, ma'am.
[503] Q. Let me show you Government's Exhibit No. 50 on the screen. Did they look like that gun?
A. Yes, ma'am.
Q. And there were two of them that you saw?
A. Yes, ma'am.
Q. And this was after the second gun show?
A. I can't remember if it was after the first or the second.
Q. Now, some of the—You had quite a few people or young men that hung out at your apartment. Isn't that right?
A. Yes, ma'am.
Q. You have Pacman?
A. Yes, ma'am.
Q. Hookie?
A. Yes' ma'am.
Q. Tyshon, he goes by Little Ty. Is that correct?
A, I just know him as Tyshon.
Q. Tyshon? A.D.
A. Yes, ma'am.
Q. A person named Casper?
A. Casper?
Q. Casper.
A. Yes, ma'am.
Q. Capone?
A. Yes, ma'am.
Q. Little Half?
[504] A. Yes, ma'am.
Q. E?
A. Yes, ma'am.
Q. And K.T. You mentioned K.T.
A. T.K.

Q. T.K. I am sorry. And all of these people would mill around outside and sometimes be in the apartment?

A. Yes, ma'am.

Q. And they may be meeting other friends that would drive up to the apartment; people that you may not know?

A. Yes, ma'am.

Q. During the time that the guns were purchased at the gun show, do you recall your mom having an argument with Hookie with Cory Sanders and calling the police?

A. No, ma'am.

Q. And when the police arrived, A.D. had to run out of the apartment. Do you remember that incident?

A. Yes, ma'am. He was with T.K.

Q. T.K. So your mom had an argument with T.K.?

A. Yes, ma'am.

Q. And your mom called the police?

A. Yes, ma'am.

Q. And the police arrived at her apartment?

A. Yes, ma'am.

Q. And A.D., who had his nine millimeter gun, ran out of the [505] apartment?

A. Yes, ma'am. Re was already gone when the police got there.

Q. And he had to throw his gun over the fence.

A. Yes, ma'am.

Q. And the other guys were talking about going and getting the gun before A.D. got back?

A. Yes, ma'am.

Q. But A.D. went and got his gun before they got back?

A. Yes, ma'am.

Q. The police came and went. Did anybody go to jail?

A. No, ma'am,

Q. Did your mom report the fact that she is being abused by all these people?

A. No, ma'am.

Q. Did you report the fact that your mom was being abused?

A. No, ma'am,

Q. Did anybody report any sort of threats that are going on?

A. No, ma'am.

Q. Did anybody say, "I have been forced to buy these guns at the gun show"?

A. No,

Q. Any of that?

A. No.

Q. Remember the day your mom was sentenced?

A. Yes, ma'am.

[506] Q. In fact, that was the Wednesday following that last gun show.

A. Yes, ma'am.

Q. So the gun show was on January 11th, 2003, and your mom came to this building to be sentenced.

A. Yes, ma'am.

Q. And that was January 15th, 2003?

A. Yes, ma'am.

Q. You were here?

A. Yes, ma'am.

Q. Your grandmother was here?

A. Yes, ma'am.

Q. Ted Dixon was here?

A. Yes, ma'am.

Q. At some point Pacman even showed up because he needed to pick up the car and take it back to pick up your sisters.

A. Yes, ma'am.

Q. Because they needed to be picked up from school?

A. He was in the car.

Q. But he had to come up and get a house key because for some reason he didn't have a key?

A. No.

Q. So he had your mom's car at that time?

A. Yes, ma'am.

Q. But he came up to the court for a short period of time?

[507] A. Yes, ma'am.

Q. That was a lengthy hearing that was had that day, wasn't it?

A. Yes, ma'am.

Q. At any time in that hearing did anybody tell the Judge, "Judge, we are being abused; we are being threatened"?

A. No, ma'am.

Q. Did anybody tell the Judge, "We have been forced to buy guns at gun shows"?

A. No, ma'am.

Q. Your mom had to meet on a regular basis with a Pretrial Services officer while she was on bond for the offense.

A. Yes, ma'am.

Q. Did you ever contact the Pretrial Services officer who works for the courts to say, "We are being abused; we are being forced to buy guns"?

A. No.

Q. To your knowledge did your mom ever do that?

A. No, ma'am.

Q. She had to meet with him on a monthly basis, didn't she?

A. Yes, ma'am.

Q. And some of those meetings were here in this building?

A. Yes, ma'am.

Q. Did you come with her on Occasion?

A. Yes, ma'am.

[508] Q. In the past your mom has gone to the court to get a restraining order in situations where she felt threatened. Isn't that correct?

MR. JETT: Excuse me, Judge. Can I approach the bench?

THE COURT: Yes, sir.

(The following was had outside the presence and hearing of the jury)

MR. JETT: Judge, this goes to the Ted Dixon stuff you wouldn't let me go into.

THE COURT: I don't know what it goes to.

MR. JETT: That is what it is, I am telling you.

MS. HEATH: I am going to the fact she knows how to get a restraining order. I am not going into the detail of what the problem is; just that she knows how to get a restraining order.

MR. JETT: That opens up going into Ted Dixon and being abused. She brought up and tried to make the point that Ted was somebody they could rely on, and I think I get to go into the fact he was abusive, too.

THE COURT: Well, when we get to that point we can certainly discuss it. It may be that you have opened the door. We will deal with it there. Let's see.

MR. JETT: For the record, based on the Court's prior ruling, since I was prohibited from going into the matters [509] about Ted Dixon and his abuse, I object to her asking questions about Ted Dixon and those issues that relate to the abuse.

THE COURT: She hadn't mentioned Ted Dixon. She asked if she knew about the restraining order.

MR. JETT: The restraining order—

THE COURT: Counsel, I don't want to argue. We will deal with that later. Overrule the objection.

The following was had in the presence and hearing of the jury.

MS. HEATH: Q. Ms. Ashford, you know in the past that your mother has gotten a restraining order.

THE WITNESS: A. I don't know about it.

Q. You were not with your mom at either one of the gun shows?

A. No, ma'am,

Q. And neither were either of your sisters?

A. No, ma'am.

Q. Your grandmother was not there at the gun show?

A. No, ma'am.

Q. The nine millimeter gun, the gun that was shown on the screen earlier that was in A.D.'s possession, A.D. didn't buy that gun for himself, did he?

A. I don't know the story on it.

Q. So you don't know who actually bought the gun for him?

A. No, ma'am.

MS. MEATH: Your Honor, I will pass the witness.

[510] THE COURT: Mr. Jett?

MR. JETT: Could I approach the bench?

THE COURT: Yes, sir.

(The following was had outside the presence and hearing of the jury)

MR. JETT: Can I ask about Ted Dixon now? I think she opened—I mean, she made a point that they could call on Ted. There is a reason why she wouldn't.

THE COURT: I will let you ask about why they didn't, because you did bring up that. So I will let you ask her why they didn't call, and then take it from there,

MR. JETT: The other thing, Doctor Myers is in the hall. I forgot to bring her in for this witness. I would like to bring

her in. I don't think my redirect will be long, or recross isn't long. Can we bring her in with the next witness?

THE COURT: Sure. Okay. That will be fine,

(The following was had in the presence and hearing of the jury)

REDIRECT EXAMINATION

By Mr. Jett:

Q. Queshia, was there a reason why you all didn't call on Ted Dixon to help you?

A. He wasn't really a reliable person.

Q. Okay. Did you have any experiences with Ted Dixon in the past that caused you not to want to call on him?

[511] A. Yes, sir.

Q. And what were those experiences?

A. He was abusive to my mom and me and my sister.

Q. When you say "abusive," what did he used to do?

A. He used to beat us, all three.

Q. He used to heat your mom?

A. Yes, sir,

Q. And he used to beat your sister?

A. Yes, sir.

Q. And this was Joycelyn?

A. Yes, sir.

Q. And he used to beat you?

A. Yes, sir.

Q. Did that go on a short time or a long time?

A. Long time.

Q. Was that why they got divorced?

A. Yes, sir.

Q. Let me ask you this. were you afraid of these guys and these guns?

A. Yes, sir.

Q. Did that have something to do with why you didn't talk to other people?

A. Yes, sir.

MR. JETT: Pass the witness.

THE COURT: Ms. Heath?

[512] MS. HEATH: No further questions, Your Honor.

THE COURT: Ms. Ashford, you may step down. Thank you. Next witness?

MR. JETT: Call Joycelyn Dixon. May I get her, Your Honor?

THE COURT: Yes, sir.

(Whereupon, the oath was administered by the Court)

JOYCELYN DIXON,

TESTIFIED ON DIRECT EXAMINATION BY MR. JETT AS FOLLOWS:

Q. Would you state your name, please?
A. Joycelyn Sherrell (phonetic) Dixon.
Q. Can you lean up and try to talk into that microphone?
A. Joycelyn Sherrell Dixon.
Q. Okay. And Joycelyn, how old are you?
A. Fourteen.
Q. Where do you live?
A. 8404 Charles in Greenville, Texas.
Q. Who do you live with?
A. My grandma.
Q. And who else lives there?
A. My grandpa and my auntie and my two sisters.
Q. Okay. Do you go to school?
A. Yes.
Q. And what grade are you in?
A. The ninth.
[513] Q. Are you in any activities in school?
A. No.

Q. Okay. What do you want to be when you grow up?

A. A lawyer.

Q. Do you know this lady Tight back here?

A. Yes.

Q. Who is that?

A. My mother.

Q. And before you went to live with your grandmother, did you always live with your morn?

A. Yes.

Q. Have you lived with her all your life until recently?

A. Yes.

Q. What happened that caused you to live with your grandmother?

A. My mama went to jail.

Q. Where were you all living at the time she went to jail?

A. In north Dallas on Forest Springs Road, I believe.

Q. And before that where did you live?

A. In Hyde Park on Melody Lane.

Q. When you were living in Hyde Park on Melody Lane, did you come to know somebody by the name Of Thomas Earl Wright?

A. It is Thomas Earl Wright, Jr.

Q. And you might be a good lawyer, Does he have a nickname?

A. Pacman.

[514] Q. Okay. When did he start coming around?

A. He started coming around in August.

Q. Of what year?

A. Of 20G2.

Q. And when he first started coming around, what did you think of him?

A. He was nice at first.

Q. Was he nice to you and your sisters?

A. Yes.

Q. Was he nice to your mom?

A. At first.

Q. Okay. Did they get along well at first?

A. Yes, at first.

Q. Did that change?

A. Yes.

Q. When did it change?

A. I would say like around October.

Q. Okay. And how did it change?

A. He started hitting on my mother.

Q. Was there arguments that went along with that?

A. Yes.

Q. How often would he hit her?

A. It seemed like every day.

Q. Would there be any evidence that he was hitting her?

A. She had bruises on her chest and on her arms.

[515] Q. At this time how did he treat you and Ve'Queshia?

A. He still treated us nice.

Q. Okay. During this time, let's say October or so, was he living there or just coming around a lot?

A. I can't remember,

Q. At this particular time was your mom scared of him?

A. Yes.

Q. Okay. But did they break up?

A. Yes.

Q. Okay. And did he ever really completely go away?

A. No. He just kind of left and then he came back for a couple of days, and then he would leave again and then he would come back.

Q. But at some point did he—Let me ask you this. At some point did you all move or change apartments?

A. Yes.

Q. And when was that?

A. In December.

Q. Is that when you moved to Forest Springs?

A. Yes.

Q. When you all moved, how did you all get moved to that apartment?

A. Pacman helped us move.

Q. And after you all moved in there, did Pacman begin living there full time?

[516] A. Yes.

Q. And when he started living there, how did he and your mom get along?

A. They still argued a lot.

Q. Was there still hitting going on?

A. He still hit her.

Q. Did she still have bruises?

A. Yes.

Q. Was she scared of him?

A. Yes.

Q. Did she lose her job sometime in here?

A. Yes.

Q. When was the—Well, through December did the hitting continue?

A. Yes.

Q. Was—What would they argue about?

A. Everything.

Q. Was your mom able to come and go as she pleased?

A. No.

Q. And how was that?

A. If she did leave, one of his friends always left with her. She couldn't ever go anywhere by herself.

Q. When was the first time you saw guns in your house?

A. Around January.

Q. Do you remember talk about a gun show?

[517] A. Yes.

Q. The day your mom went to the gun show, where were you?

A. I believe I was at home.

Q. And did somebody return with some guns?

A. Yes.

Q. Who was that?

A. Pacman and Rookie.

Q. What kind of—Do you remember what kind of guns they were?

A. It was one gun with a red laser on the front of it and two guns that looked just alike.

Q. The red laser, did it have a dot like that?

A. Yes.

Q. Who did the guns belong to?

A. Pacman and Rookie.

Q. Did they belong to your mom?

A. No.

Q. Did she ever get them out and play with them?

A. No.

Q. Did Pacman ever point guns at anybody?

A. Yes.

Q. And who did he point guns at?

A. He pointed one at my mama and then he pointed one at me.

Q. Okay. And which gun did he point at you?

A. The one with the red dot on the end of it.

[518] Q. Where did he point it?

A. At my forehead.

Q. And where did he point it at your mom?

A. I can't remember exactly where it was.

Q. I mean, was it on her arm or leg?

A. It was on her face.

Q. It was on her face. It was it something like this?

A. Yes.

Q. How many times did he do that?

A. I can only recall once.

Q. What did he say when he would point the gun at somebody with the red dot?

A. "What do you know"—

MS. HEATH: Objection, Your Honor hearsay.

THE COURT: Overrule the objection. You may answer.

MR. JETT: Q. You can answer the question.

THE WITNESS: A. "What do you know about that red dot?"

Q. What did you know about the red dot?

A. Nothing.

Q. When he pointed the red dot at you, was he pointing the gun at you?

A. Yes.

Q. After this first gun show, did the arguments continue?

A. Yes.

[519] Q. Did the hitting continue?

A. Yes.

Q. Did your mom continue to have bruises?

A. Yes.

Q. Old bruises or new bruises?

A. Old and new.

Q. After this first gun show, were there any limitations on where your mom could go?

A. Yes.

Q What were the limitations?

A. She could only go to the store and back.

Q. Could she go by herself?

A. No. She always had one of his friends with her, and when she went to church she had his friend with her.

Q. Do you recall a second gun show?

A. No.

Q. Do you recall the hitting continuing through January?

A. Yes.

Q. After this first gun show, did you continue to see guns around the house?

A. Yes.

Q. Did they continue to have arguments?

A. Yes.

Q. Did she continue to get beat on through January?

A. Yes.

[520] Q. Was your mom scared of Pacman?

A. Yes.

Q. How about you? Were you scared of him?

A. Yes.

Q. You were talking about church. After the gun shows, was that when somebody went to church with you all?

A. Yes.

Q. Who was that?

A. Pacman's friend Hookie.

Q. Did Hookie have guns, too?

A. Yes.

Q. Do you remember Hookie' s name?

A. Cory Sanders.

Q. Thank you.

MR. JETT: Pass the witness.

THE COURT: Ms. Heath?

MS. HEATH: Yes, Your Honor.

CROSS EXAMINATION

By Ms. Heath:

Q. Ms. Dixon, my name is Candy Heath. How are you doing?

A. Fine.

Q. You are currently going to school in Greenville?

A. Yes.

Q. In January of 2003, what school were you going to?

A. January I was going to Forest Meadows Middle School.

[521] Q. And you had good attendance?

A. Yes.

Q. And in December of 2002, were you still going to the same school or was it a different school? A. You mean before we moved?

Q. Before you moved to Forest Springs.

A. Before we moved to Forest Springs I was going to I believe it was Lake Highlands Middle School.

Q. And you had good attendance there, too?

A. Yes.

Q. Didn't miss a lot of school and weren't sick a lot?

A. No.

Q. Prior to Pacman living with you on and off, you and your sisters and your mom lived with an individual by the name of Tabyrai Sweat?

A. Tabyrai Sweat.

Q. And his mom Beverly moved in at some point?

A. Yes.

Q. And you lived with them for a while?

A. Yes.

Q. And then there was an argument or some reason why your mom broke up with him?

A. Yes.

Q. Your mom left him?

A. Yes.

[522] Q. Moved in to a new apartment?

A. Yes.

Q. Took you and your sisters with her?

A. Yes.

Q. And in the Forest Springs apartment did you just have one apartment there or were there two different apartments?

A. We just had one apartment.

Q. And it had two bedrooms?

A. Yes.

Q. You and your sisters shared one bedroom?

A. Yes.

Q. And your mom had another bedroom?

A. Yes.

Q. And Pacman was there sometimes, but sometimes he was there and would spend the night sometimes?

A. True.

Q. And he had another place where he would stay?

A. Yes.

Q. Your mom is about 35 or 36 years old?

A. Yes.

Q. And at the time of the gun shows she was 35 years old?

A. Yes.

Q. Pacman was about 21 at the time?

A. I am not sure how old he was.

Q. Early 20s?

[523] A. Probably. I would say so.

Q. And his friend Hooke is also in his early 20s?

A. I am not sure.

Q. About the same age as Pacman?

A. I don't know.

Q. There are other people that came and went from your apartment. Isn't that right? Other young males?

A. Yes.

Q. In fact, your sister had a boyfriend A.D.?

A. Yes.

Q. And she went out with him for a while?

A. Yes.

Q. And he would come and go?

A. Yes.

Q. He became pretty good friends with Pacman?

A. They talked, but I don't know if they were friends or not.

Q. You had another person by the nickname of E that came by the apartment?

A. Yes.

Q. A guy with the nickname Little Half came by the apartment?

A. Yes.

Q. These people come and go. They are not staying there.

A. No.

Q. They are just visiting?

A. Yes.

[524] Q. Tyshon Hillary?

A. Yes.

Q. A person by the nickname Capone?

A. Yes.

Q. A person by the nickname of Casper?

A. I don't recall Casper coming over there.

Q. And T.K.

A. Yes.

Q. In fact, during the gun show, your mom had an argument with T.K., didn't she?

A. Yes.

Q. And she called the police on him she was so mad?

A. Yes.

Q. And do you remember during that time when the police came to the apartment?

A. I wasn't there. I was at church with my grandmother.

Q. So you were gone from the apartment?

A. Yes.

Q. You were with your grandmother. But you heard about the police coming to the house?

A. Yes.

Q. Was Divinity with you?

A. Yes.

Q. And your grandma, your grandmother and your grandfather both wanted to see you on a regular basis. They wanted to come [525] visit with you or go to church with you?

A. My auntie used to come get us and take us to church.

Q. Would that be on a regular day of the week, would that he on Sunday, or another day during the week?

A. Just Sundays or Saturdays. Sometimes she get us Friday night and we would spend the weekend with her.

Q. That is in Greenville?

A. No. My aunt stays in Dallas and we go to church in Dallas.

MR. JETT: It we are talking about this, can we have a time frame we are talking about?

THE COURT: Ms. Heath?

MS. HEATH: Q. Was this during the Lime you lived on Melody Lane and during the time you lived on Forest Springs?

THE WITNESS: A. Forest Springs.

Q. So this is while you lived in the two bedroom apartment with Pacman?

A. Yes.

Q. Now, you mentioned that Pacman had this gun with a red dot?

A. Yes.

Q. And he was pointing it around on people, and he thinks it is real funny.

A. Yes.

Q. He is making it hit on somebody's head or chest?

A. Yes.

[526] Q. He is doing it to everybody in the apartment?

A. Not everybody. He just did it to my mother and he did it once to me.

Q. Just once to you?

A. Yes.

Q. And once to your mom?

A. I am not sure how many times he did it to my mother, but I can only recall once.

Q. And your mom is telling him to stop doing that?

A. Yes.

Q. Now, during the time that you were living in either Melody Lane or Forest Springs when Pacman could come and go from your apartment, did he have a key to your apartment?

A. I am not sure if he did or didn't.

Q. Your mom had a key?

A. Yes.

Q. Did you have a key?

A. No.

Q. So you needed to make sure or somebody needed to be home when you got home from school to let you in?

A. I was picked up from school.

Q. Would your mom pick you up from school?

A. No. Yes, she did.

Q. And on occasion Ted Dixon would pick you up from school?

A. Yes. If my mother couldn't make it home from work in time [527] then Ted would pick us up.

Q. So she relied on Ted occasionally to pick you and your sisters up from school?

A. Yes.

Q. Now, Ted Dixon had regular visitation with Divinity, and sometimes you and Ve'Queshia would go with him?

A. Yes.

Q. And you would go out and spend the weekend with him?

A. We didn't spend a weekend. We spent a day or so.

Q. Okay. And you go out and eat some place or go hang out?

A. He would take us but he wouldn't take us out to eat.

Q. And since you moved to Greenville, Divinity has seen Ted Dixon more than you and your sister Ve'Queshia?

A. Yes.

Q. But she has seen him still on a regular basis?

A. Yes.

Q. Now, you mentioned or Mr. Jett asked you several times were you afraid of Pacman.

A. Yes.

Q. You weren't afraid of Pacman everyday, were you?

A. Not at first I wasn't. I wasn't afraid of him until he started hitting on my mother.

Q. And during the time that he is hitting on your mother, that makes you afraid of him?

A. Yes; because of previous experiences.

[528] Q. As you are going to school during this period of time, you are not telling your teachers about it, are you?

A. No.

Q. And you are not telling your counselors about it?

A. No.

Q. And sometimes there is even a security officer or police officer at the school, isn't there?

A. Yes.

Q. And you didn't tell him about it?

A. No.

Q. You didn't tell your grandmother about it?

A. No.

Q. Didn't tell your aunt about it?

A. No.

Q. Didn't tell Ted Dixon about it?

A. No.

Q. Didn't tell either of your grandpas about it?

A. No.

Q. Did you go to the apartment complex and report it to the security people at the apartment complex?

A. No.

Q. Did you report it to the apartment manager and say, "We need to change our locks. We need to get him out of here"?

A. No.

Q. Did you call the police?

[529] A. No.

Q. To your knowledge, did your mom ever call the police on Pacman?

A. Not that I know of.

Q. Now, you came with your mom to this building on occasion when she visited her Pretrial Services officer?

A. Uh-huh.

Q. His name—Is that a yes?

A. Yes.

Q. His name was Louie Rodriguez?

A. Yes.

Q. And those meetings were about once a month?

A. Yes.

Q. And he had to verify where she was living and all that information?

A. Yes.

Q. Verify that she was still working somewhere, if she was?

A. Yes.

Q. At any time during those meetings did you or your mom report the fact that she is being abused?

A. No.

Q. Did she ever report the fact that she has been required to buy guns?

A. Not when I was with her, because I only went with her twice.

[530] Q. And when you would go with her, would Divinity go?

A. No.

Q. Did Ve'Queshia go?

A. She went with her once, but I wasn't with them when she went with her.

Q. Anybody else go?

A. Not that I know of.

Q. Was this in your mom's car?

A. Yes.

Q. Did you—Other than the gun with the laser dot, did you see other guns at the apartment?

A. Yes.

Q. Which other guns did you see?

A. There were two guns that looked just alike that Pacman and Hookie used to call their twins.

Q. Okay. If we could show Government's Exhibit No. 50 on the screen, does this look like the twins?

A. Yes.

Q. So Government's Exhibit No. 50 looks like the two guns that Pacman and Hookie had?

A. Yes.

Q. Did you see A.D. with a gun?

A. Not that I can recall.

Q. Your mom had another friend I believe by the name of Greg?

A. Yes.

[531] Q. Did she ever tell Greg that she was having problems?

A. Not that I know of.

Q. Do you know if—Were you ever present when she told Ted Dixon she was having problems and needed to get out of the situation's

A. No.

Q. At any point did your mom say that, you know, "Girls, get ready. We need to pack up all our belongings and move out of here"?

A. No.

Q. Do you know A.D.'s real name?

A. No.

Q. Just know him by nickname?

A. Yes.

Q. Do you know what school he went to?

A. No.

Q. And was he about 18 or so?

A. I don't know.

Q. But A.D. wasn't originally one of Pacman's friends.

A. No.

Q. A.D. was your sister Ve'Queehia's friend?

A. Yes.

Q. And A.D. sort of scared your too, didn't he?

A. No.

O. He didn't scare you?

[532] A. No.

MS. HEATH Your Honor, we will pass the witness.

THE COURT: Mr. Jett?

REDIRECT EXAMINATION

By Mr. Jett:

Q. Joycelyn, is there a reason why you all couldn't call on Ted and ask for his help?

A. Because he used to hit on my mother, too.

Q. Did he hit on you?

A. Yes, and my alder sister Ve'Queshia.

Q. Did he ever hit on the little one, Divinity?

A. No.

Q. Divinity was his daughter. Is that right?

A. Yes.

Q. But you are not?

A. No.

Q. And neither is Ve'Queshia?

A. No.

Q. How long did you all live with Ted Dixon?

A. Until I was—I believe I was 13.

Q. And about how old were you when your morn married him? Do you recall?

A. No.

Q. Would it be as much as eight or nine years that you lived with him?

[533] A. I think so.

Q. And when you say he hit on your mom, was this an infrequent or a frequent thing?

A. Frequent.

Q. When he hit on you and Ve'Queshia, was it frequent or—

A. Frequent.

Q. Do you feel safe being around Ted?

A. No.

Q. Did you want to spend time with him?

A. No.

Q. Did he ever hit on Divinity?

A. No.

Q. These other guys like Greg and T.K. and any of them of those guys, were they friends of Pacman?

A. Yes.

Q. Would it have done any good to talk to them about what was going on?

A. No.

Q. Were they aware of it?

A. Yes.

Q. Did they offer to help anybody?

A. No.

Q. Were they going along with it?

A. Yes.

Q. Why didn't you tell your Teachers and other folks?

[534] A. I don't know.

Q. Were you scared?

A. Yes.

Q. Did you feel embarrassed about what was going on?

A. Yes.

MS. HEATH: We object to the constant leading.

THE COURT: Sustained.

MR. JETT: Q. Any other reasons why you didn't tell them?

THE WITNESS: A. None except for that I was scared, and like my mother was with Pacman, the relationship was unpredictable, and you never knew what was going to happen next.

Q. Whose well-being were you concerned about?

A. Mine and my sisters and my mother's.

MR. JETT: Pass the witness.

THE COURT: Ms. Heath, any other questions?

MS. HEATH: No further questions, Your Honor.

THE COURT; Ms. Dixon, you may step down. Thank you. You are free to go.

MR. JETT: May we approach, Your Honor?

THE COURT: Yes, come on up.

(The following was had outside the presence and hearing of the jury)

MR. JETT: I am not resting. You looked at me.

A. Correct. If I had known anything, I would have asked questions

* * * *

[549] THE COURT: Right, That issue has been properly raised, and we will deal with that when we get to Doctor Myers. Are you ready to proceed, then?

MR. JETT: Yes, Your Honor.

THE COURT; Who is your witness?

MR. JETT: Keshia Dixon.

THE COURT: Ms. Dixon, do you want to come around to the witness stand?

(Whereupon, the jury entered the courtroom)

THE COURT: Ms. Dixon, raise your right hand and be sworn in.

(Whereupon, the oath was administered by the Court)

KESHIA CHERIE ASHFORD DIXON,

TESTIFIED ON DIRECT EXAMINATION BY MR. JETT AS FOLLOWS:

Q. Would you state your name, please?
A. Keshia Cherie Ashford Dixon.

Q. Can you sit up a little bit so you can talk Into the microphone, please. And I don't know if the mic will pull toward you.

THE COURT: The microphone adjusts. The chair doesn't, but the microphone does.

MR. JETT: Q. Are you the Defendant in this case?

THE WITNESS: A. Yes.

Q. How old are you?

A. Thirty-six.

[550] Q. Where were you born?

A. Hunt County.

Q. What city?

A. Greenville, Texas.

Q. What does your family consist of when you were growing up?

A. What did they consist of?

Q. What did it consist of? In other words, who was in your family?

A. My mother, my stepfather, my six sisters, and a brother. Q. And what kind of work did your mom do?

A. She do health care.

Q. Does she still do that?

A. Yes.

Q. How about your dad?

A. He has his own business. It is construction.

Q. And you say you grew up with your stepfather. Do you know who your real father is?

A. Yes.

Q. And after a while growing up you had a relationship with him as well?

A. Yes.

Q. Did you go to high school?

A. Yes, I did.

Q. And did you graduate?

A. Yes.

[551] Q. And where did you go to high school?

A. Greenville Senior High.

Q. When d'd you graduate?

A. 1996.

Q. After you graduated from high school, did you have a baby?

A. Yes.

Q. And which one was that?

A. Ve'Queshia.

Q. Is that the first young lady we saw yesterday?

A. Yes.

Q. Are you proud of her?

A. Yes, I am.

Q. Did you marry her father?

A. No.

Q. Was that your choice or his choice or a mutual choice?

A. It was a mutual choice.

Q. Later on did you have Joycelyn?

A. Yes.

Q. And was her father wanting to be involved in her life at the time?

A. Off and on.

Q. And at some point you got married, did you not?

A. Yes, I did.

Q. And also at some point you moved from Greenville to the Dallas area?

[552] A. Yes.

Q. About when was that?

A. It was like 1988.

Q. Prom the time you got out of high school until you moved to Dallas did you work?

A. Yes.

Q. Where did you work?

A. I worked at Henslin (phonetic) Factory and Braum's.

Q. And when you moved to Dallas did you work?
A. Yes.
Q. Where did you work?
A. I was working at Kroger.
Q. Did you get married at some point?
A. Yes, I did.
Q. And who did you get married to?
A. Ted Dixon.

MR. JETT: Your Honor, may I approach the bench just a moment?

THE COURT: Yes.

(The following was had outside the presence and hearing of the jury)

MR. JETT: I know you ruled previously about going into the relationship with Mr. Dixon. Are we still under—Is that still the status of your ruling?

THE COURT: I think it has come out. I don't want to [553] spend a lot of time on it, but I think you are entitled to go into it some. Obviously that is not the direct cause of the duress. I don't want to spend a lot of time on it, but I think it is fair now.

MS. HEATH: We still object to the relevance of that, when the Government did not go into any relationship with Dixon except current relationships.

THE COURT: That is true, but you opened the door by your questioning, and then why didn't they call him. And think that is the way—That is how I think you opened the door for it.

MS. HEATH: For the record, we object as to the prejudice that that would put on the Government, because that goes to simply a sympathy matter. It does not go to the issue of duress, and the jury is not supposed to be considering sympathy in this case.

THE COURT: I understand it doesn't go to duress, but it goes to an issue that you opened up by your questioning. That is why I am letting it in, if you will cover it in that format.

MR. JETT: And in the format of asking her why she wouldn't call Ted Dixon.

THE COURT: That is how it becomes relevant, otherwise it isn't relevant, if that is why she didn't call him. If there is another reason, then obviously it wouldn't [554] be; but if that is why she didn't call him, that would be relevant to that.

MR. JETT: Okay. Thank you.

(The following was had in the presence and hearing of the jury)

MR. JETT: Q. And so you married—When did you get married?

THE WITNESS: A. 1931. I am sorry. 1991.

Q. And who did you get married to?

A. Ted Dixon.

Q. Now, there was some discussion yesterday about you wouldn't call Ted Dixon under the circumstances that you found yourself in. Why is that?

A. Why I wouldn't call Ted Dixon?

Q. Yeah. Was there something about your marriage and relationship with Ted Dixon that would make it so you didn't want to call him about those problems?

A. Yes.

Q. And what was that?

A. Me and Ted had some of the similar problems.

Q. Was Ted—When you say "similar problems," would you tell the jury about that, please?

A. Yes. He was abusive towards me and my childrens.

Q. When you say "abusive," what did he do?

A. He jumped on me; he beat my kids.

[555] Q. Was this a regular thing throughout your marriage?

A. Yes, it was.

Q. Did you separate from him at one time?

A. Yes.

Q. Did you all get back together?

A. Yes.

Q. And at some point did you actually incur serious injury?

MS. HEATH: Your Honor, we object to leading the witness, and ask that the witness be allowed to answer in her own words.

THE COURT: sustained.

MR. JETT: Q. At some point can you tell the jury whether or not you suffered some injury from Mr. Dixon?

THE WITNESS: A. Yes, I did.

Q. What was the nature of that?

A. I went through a window.

Q. And what was going on just before you went through the window?

A. We was fighting, and I had told him I was going to leave him.

Q. And then what happened?

A. Next thing I know I went through the window.

Q. Okay. And after you went through the window, what happened?

A. I was told he picked me up and took me to the hospital.

[556] Q. Did you go to the hospital?

A. Yes.

Q. And did you—Tell me whether or not you continued to live with him for some time after that?

A. Yes.

Q. When did you go through the window?

MS. HEATH: Your Honor, we object as to the relevance of this and her January 2003 decision as to whether or not she would call Mr. Dixon.

THE COURT: Overrule the objection. Go ahead.

MR. JETT: Q. When did you go through the window?

THE WITNESS: A. I think it was in 1998, '99. I am not quite sure.

Q. After you went through the window, can you tell us whether or not you lived with Mr. Dixon after that?

A. Yes, I did.

Q. Eventually did you all split up?

A. Yes.

Q. Did you leave him or did he leave you?

A. I left him.

Q. And after that did you all get divorced?

A. Yes.

Q. When did you get divorced?

A. In 2001.

Q. Now, your maiden name was what?

[557] A. Ashford.

Q. Did you take on another name when you got married?

A. Yes; Dixon.

Q. So you were known as what before you got divorced?

A. Keshia Cherie Dixon.

Q. And after you got married—Excuse me. After you got divorced, what did you decide to do about your name?

A. I took my maiden name back.

Q. And what was that?

A. Ashford.

Q. Okay. And after you got divorced, at some point did you change your driver's license?

A. Yes.

Q. Do you remember when that was?

A. I don't know the exact date.

Q. Can you tell us approximately when it was?

A. I think it was in 2002.

Q. And when you changed your driver's license, what was the name that you changed your driver's license to?

A. Ashford.

Q. So what would have been on the driver's license?

A. Keshia Cherie Ashford,

Q. At the time you changed your driver's license, did you put your correct address on it?

A. Yes.

[558] Q. Now, after you changed your driver's license, did you move again?

A. Yes, I did.

Q. Do you remember what address you lived at when you changed your driver's license?

A. I was living on Skillman.

Q. And do you remember how long after you changed your driver's license did you move?

A. Maybe two to three months later.

Q. After you moved, did you change your driver's license?

A. No, I didn't.

Q. Is there a reason why?

A. No.

Q. Can you—When you moved from the Skillman address, where did you move to?

A. Melody Lane.

Q. And who did you live on Melody Inane with?

A. Me and my childrens.

Q. Who are they?

A. Ve'Queshia Joycelyn, Divinity.

Q. Who is Divinity's father?

A. Ted Dixon.

Q. Was she born during your marriage to Mr. Dixon?

A. Yes.

Q. When you were living on Melody Lane, what kind of an [559] apartment did you have there?

A. I had a one bedroom.

Q. Now, after you divorced from Ted Dixon, were you working?

A. Yes.

Q. What were you doing?

A. I was the deli manager at Wal-Mart.

Q. And at some point did you lose that job?

A. Yes, I did.

Q. After you lost that job, did you start to do other things to earn a living?

A. Yes.

Q. What was that?

A. I got involved in a check scam.

Q. Okay. And you were arrested, Were you approached by the agents for the government?

A. Yes, I was.

Q. And as a result of that, being approached by them, did you decide to assist them?

A. Yes, I did.

Q. And what did you do?

A. I helped them—It was a guy that was giving me the checks to give to other people to cash, and they wanted to catch him, like I guess like that he is giving me the checks or I am giving him the people from the people cashing the checks. And they had it set up on a Saturday where they had me call him [560] and he brought me some checks.

I told him I had a couple of people that wanted to cash them. And they had me come to the office, I had the checks, I gave them the checks, they gave the checks back to me, they had me call him to tell him where to meet me at. We never took anybody to go cash the checks or anything, so he was thinking he was coming to meet me to get the money. Silt

instead, they had the checks in between newspaper, and had him walk to my car. He is supposed to walk to the car and I hand it to him.

Q. Ms. Dixon, did he get arrested?
A. Yes, he did.
Q. And did you plead guilty to a charge?
A. Yes, I did.
Q. Okay. And that had to do with being involved with this check cashing scheme. Is that correct?
A. Yes.
Q. And you pled guilty in this court. Is that right?
A. Yes.
Q. And did you receive a sentence?
A. Yes, I did.
Q. What was your sentence?
A. Twelve months.
Q. Now, while this case was pending, after you had helped the Government, did you meet somebody?
A. Yes, I did
[561] Q. And who did you meet?
A. Thomas Earl Wright.
Q. Does he have a nickname?
A. Pacman.
Q. Can you tell me when you met him?
A. It was in 2002.
Q. Do you remember about what time?
A. Around August.
Q. And how did you meet him?
A. I met him at a liquor store.
Q. Did—What did you think of him at first?
A. I liked him.
Q. Do you know about how old he was?
A. No, not at the time.
Q. Did you and he start to go out?
A. Yes.
Q. Did you become involved?

A. Yes.

Q. At the time this all happened, what was—Had you pled guilty in this case here? I mean in the other case. Excuse me.

A. No, I hadn't; no.

Q. So that case was still pending?

A. Yes.

Q. When you met him were you working?

[562] A. Yes.

Q. And did you all—How did you get along at first?

A. We got along okay.

Q. Did you all have—Did you like him a lot?

A. Yes.

Q. And did he start spending a lot of time with you?

A. Yes.

Q. And where were you living at this time?

A. On Melody Lane.

Q. Now, would it be accurate, did he spend a lot of time or just a little time with you?

A. Off and on.

Q. Was—To start with, did you have a good relationship or not a good relationship to start with?

A. It started out; yeah.

Q. How was it when it started out?

A. It was okay.

Q. And as you went on, did the relationship change?

A. Yes, it did.

Q. How did it change?

A. We started arguing and fighting.

Q. And what were you arguing and fighting over?

A. About money, about my car, about places I wanted to go.

Q. What were the arguments about in terms of the money?

A. He wanted me to give him money.

[563] Q. Did you do that sometimes?

A. Yes.

Q. And what about your car?

A. He had my car.

Q. When you first met him did you think he had a car or did not have a car?

A. He had me under the impression he did.

Q. When you first met him did you have the impression he had his own place to live?

A. Yes.

Q. Okay, Did it turn out that those things were true or not true?

MS. HEATH; Your Honor, we object to the constant leading, and request that the Defendant be allowed to answer the questions in her own words.

MR. JETT: My last question was were they true or not true.

THE COURT: I think that question is okay. Go ahead.

MR. JETT: Q. Were those things true or not true?

THE WITNESS: A. It wasn't true.

Q. But you continued to still have a relationship with him?

A. Yes.

Q. In terms of the fighting, what did the fighting consist of?

A. Hitting and throwing things, breaking things.

[564] Q. Did you suffer any injury?

A. Yes.

Q. What kind of injury did you suffer?

A. I had bruises on me.

Q. Where were the bruises?

A. On my arm, back, and shoulder.

Q. Were these bruises places where they could be seen when you were dressed or places where they couldn't be seen when you were dressed?

A. Places they couldn't be seen.

Q. During these fights in this earlier part of the relationship, can you tell the jury, did he hit you any place else?

A. No.

Q. Can you tell the jury' did he hit you other places where the injuries could be seen?

A. No.

Q. Did you still, even though you all were fighting, did you still stay with him for a while?

A. Yeah.

Q. At some point did you all not see as much of each other?

A. Yes.

Q. Now, was he gone completely out of the picture or did he still come around some?

A. He still came around.

[565] Q. Was there a time when he started coming around more after you all broke up or after you quit seeing each other as much?

A. He was still coming around all the time.

Q. And when did—Was there a time when you all kind of got back together?

A. Yes.

Q. When was that?

A. Like the end of November, around the first of December.

Q. Now, after you had all of these problems with him, why did you get back together with him?

A. I was in the process of getting ready to move to a two bedroom, and I had been sitting around there waiting for my family to come help me move. My brother—

Q. I am not talking about that. I am talking about before that, if I can. Was there a reason -- Did he say anything to you or do anything that convinced you to go back together with him?

A. Did he say anything?

Q. Uh-huh. Did you all have any discussions about your relationship?

A. Yes. He told me I was always his and he done let me have all the fun.

Q. You were getting ready to move into a two bedroom apartment. Is that correct?

A. Yes.

[566] Q. And who was supposed to move you?

A. My brother.

Q. Did he show up?

A. He showed up later.

Q. How did you get moved?

A. Pacman, Hookie, and Tyshon, and Derek was there also.

Q. And now Pacman is who?

A. Thomas Earl Wright.

Q. Okay. As your daughter says, is it Thomas Earl Wright, Jr.?

A. Yes.

Q. Who is Hookie?

A. Hookie is Cory Sanders.

Q. Who is Tyshon?

A. Tyshon Hillary.

Q. And who is Derek?

A. Derek is Derek McBiller (phonetic) I believe is his last name.

Q. who are these guys?

A. Pacman's family. Hookie is a friend of his, and the other one is his cousin, and Tyshon say he is his brother, but I found out that is his cousin also.

Q. And so you were saying that you were trying to move. And what did these guys do?

A. They moved me.

[567] Q. And how did that make you—How did you feel about that?

A. I told him "thank you," because I didn't know how I was going to get moved, because I had to be moved out that day.

Q. And now, do you recall the evidence earlier about signing a lease on December the 5th?

A. Right.

Q. When did you move?

A. The next weekend.

Q. After—You said your brother did show up?

A. Yes.

Q. And after you moved, did somebody come to live with you?

A. Yes.

Q. And who was that?

A. Pacman.

Q. Now, was that okay with you at first?

A. Yeah, it was.

Q. Had you all been getting along better?

A. Yes.

Q. And after you moved in, after a while did something happen with regard to Pacman's attitude?

A. Yes. We started arguing.

Q. What were you arguing about?

A. We started arguing about the same basics--money and my car.

Q. And in particular, what were the arguments about money?

[568] A. That he was telling me that he needed some money, and every time he asked me to do something r always wanted to know why he need it, and where is he going. He said I am always questioning him, and he told me that if it wasn't for him that I would never have got moved so I owe him.

Q. Okay. Did he say anything about him and the apartment?

A. He said it was his apartment.

Q. Okay. Was he paying the rent there?

A. No, he wasn't.

Q. Did he say anything else about his role or what—

A. He said he is the man of the house and he can do what he want to do, and I just have to stand by and abide by what he say.

Q. Did you agree with that?

A. No.

Q. Did he do something to back up what he said?

A. Yeah. We started fighting, and then he pointed a pistol at me.

Q. Let's—When you all were fighting, what would happen to you?

A. I would get beat up.

Q. Okay. Again, where would you get beat up?

A. My arms, my back, and my shoulder.

Q. How often did this happen?

A. Sometimes twice a week.

[569] Q. Would your kids see this?

A. Sometimes.

Q. Were there other times when they wouldn't see it?

A. Yes,

Q. Where would that happen?

A. When they wouldn't see it?

Q. Yes, ma'am.

A. They would hear it, but they wouldn't see it. Sometimes we would be in the bedroom.

Q. Now, shortly after you moved did you have another problem?

A. Yes.

Q. What was that?

A. I lost my job.

Q. And where were you working?

A. At a daycare.

Q. Okay. And how did you lose your job?

A. They said Ted had called and had told them that I had a case and I was a felony, and I shouldn't be working around kids.

Q. Okay. And who is Ted?

A. My ex-husband.

Q. So when did you lose your job?

A. In December.

Q. Was that before or after you moved?

A. It was after I moved.

[570] Q. Was it before or after Christmas? Do you remember?

A. It was before Christmas.

Q. Now, at that time were you -- Had you been sentenced in this case?

A. No.

Q. Not this case but the other case had you pled guilty?

A. Yes.

Q. So what were we waiting to do at the time?

A. Sentencing.

Q. Now, have you been able to hire your own lawyers for these cases?

A. No, I haven't.

Q. How do you have a lawyer now?

MS. HEATH: Your Honor, we object to this as to relevance.

THE COURT: Sustained.

MR. JETT: Judge, it goes to financial circumstances is the reason I am asking.

MS. HEATH: Your Honor, he already established she didn't have a job in December, and she said she had financial problems.

THE COURT: I don't know that that goes to any issue the jury has to decide. You established she lost her job. That is good enough.

MR. JETT: Q. Now, during this time in December, did [571] Pacman have a job?

THE WITNESS: A. No.

Q. And how were you able to live? Did you have some income?

A. I had some.

Q. what was that?

A. Child support.

Q. Now, when you were fighting with Pacman in December, did he hit you any other place than the shoulders, the back, the arms, that sort of thing?

A. No.

Q. As your relationship progressed into January, did it improve or did it get worse?

A. It got worse.

Q. How did it get worse?

A. we started fighting even more than what we used to.

Q. Were you getting hurt more or hurt less?

A. I was getting hurt more.

Q. Were you able to come and go as you pleased?

A. I went, but it was always someone with me.

Q. And who would go with you?

A. It would be him or either one of his friends.

Q. Like who would these friends be?

A. Rookie or Tyshon.

Q. Now, you did own a car, did you not?

A. Yes.

[572] Q. Did you have full use of your own vehicle?

A. No.

Q. And how is that?

A. Because Pacman had it a majority of the time.

Q. Now, toward the end of December or early January, did something happen that caused you to be even more afraid?

A. Yeah. I started hearing them talking about some murders they were supposed to have been involved in.

Q. How did that make you feel?

A. I was afraid.

Q. Before this did you have any idea that they had been involved in this sort of thing?

A. No, I didn't.

Q. Was anything said to you about what you overheard?

A. As far as the murders?

Q. Yes.

A. Yeah.

Q. I am not going to ask about what they said about the murders, but did they say something to you about what you heard?

A. Yeah.

Q. What was that?

A. They told me that the laws couldn't find it, the people that—

Q. Let me back up. Did you overhear—Let me—Did they say something to you about overhearing something?

[573] A. About the gun show.

Q. Okay. There was a—Let's go to the gun show; okay? Let me ask this question. Was there a—Did they have some kind of a fear about you having overheard something?

MS. HEATH: Your Honor, we object. Mr. Jett has been trying to lead Ms. Dixon through this, and she has indicated she doesn't remember what it is they are talking about. We object.

MR. JETT: Okay.

THE COURT: Sustained.

MR. JETT: Q. At some point was there discussion about a gun show?

THE WITNESS: A. Yes.

Q. Okay. When was that?

A. It was on a Saturday. It was on a Friday night.

Q. Okay. And prior to this had they made any other threats against you?

A. No.

MS. HEATH: Your Honor, we object. We have now expanded from Pacman to "they." Apparently now we have a gang of people making threats against her, and we would like people identified if there are additional people making threats against Ms, Dixon.

THE COURT: She said no,

MR. JETT: Q. Let's talk about the Friday night [574] before the gun show. Did guns come up?

THE WITNESS: A. Yes.

Q. Who was there when guns came up?

A. Pacman, Tyshon, Hookie, and Pacman's cousin from south Dallas.

Q. And what came up?

A. He was telling him that he was going to get ready and go to—

MS. HEATH: Your Honor, we object to hearsay.

MR. JETT: This is not offered for the truth of the matter asserted, but only what was said to show her state of mind.

MS. HEATH: Also the individual has not been identified. We object to hearsay.

THE COURT: I think it is admissible. Identify the individual.

MR. JETT: Q. Who was saying about he was going to the gun show?

THE WITNESS: A. His cousin.

Q. Who was that?

A. Twin. They called him Twin.
Q. What was he saying about the gun show?

MS. HEATH: We object to Twin's statement.

THE COURT: Is this a statement from Twin?

MR. JETT: Yes.

[575] MS. HEATH: It is hearsay. There is no relevance to the statement. Twin has not been a person so far that has been threatening or hitting or abusing Ms. Dixon or making her in fear of her life to go buy firearms.

THE COURT: I tend to believe it would be hearsay.

MR. JETT: Q. As a result of what was said, that Twin said, was anything said to you about the gun show?

THE WITNESS: A. Yes.

Q. What was said?

MS. HEATH: Your Honor, again we object to hearsay. We haven't—

THE COURT: By who?

MR. JETT: Q. By who?

THE WITNESS: A. Pacman.

Q. What did he say?
A. We going to go to the gun show, and that I am going to get some guns for him.
Q. Okay. And what did you say to him about that?
A. I told him I was not going to the gun show and I wasn't going to get any guns.
Q. Okay. What happened after that?
A. We started arguing and starting fighting.
Q. Okay. what did the fight consist of?
A. Hitting, choking, and he pointed the gun at me.
Q. Where did this take place?

[576] A. In the bedroom.

Q. Okay. Had you been awake or asleep?

A. I was asleep.

Q. So you were asleep. Tell us how you woke up.

A. I woke up and I had got up and went to the restroom, and I heard them talking in the living room. And I laid back down.

Q. Okay. And then what happened?

A. And then later on Pacman came into the bedroom.

Q. And then what did he do?

A. He asked me if I was asleep, and I said "Uh-huh." And then he said, "Get. up. We need to talk."

Q. And tell the jury what happened after that,

A. He told me that we was going to go to the gun show and I was going to get some guns for him. We started arguing and fighting, and then he pointed the gun and told me that, "You don't think I will kill you but I will. You are going to do what I want you to do."

Q. During the fight, did anything—Was it the same fighting where he hit you on the arms and the back?

A. No. He split my lip.

Q. Had he ever done that before?

A. No.

Q. Had he ever pointed a gun like that at you before?

A. No.

Q. What did you think when he pointed the gun at you?

[577] A. I started thinking about the times I heard him in there talking about the murders.

Q. Did he say anything else about what he might do to you with the gun?

A. He told me that if I don't do what he told me to do, he going to kill me; and that he know how much I love my kids, and if I don't do what he want me to do, he going to have to kill my kids, too, because they know he's there.

Q. How did you feel about this?

A. I was afraid.

Q. When he pointed the gun at you, where did he point it at?

A. In my face.

Q. When he was pointing the gun at you, or what was he saying when he pointed the gun at you? Is that what you just told the jury, or was there something else?

A. Yeah.

Q. Which one?

A. He was pointing the gun at me.

Q. Is that when he was threatening to kill you?

A. Yes.

Q. So what happened the next day?

A. We went to the gun show.

Q. Who went?

A. Me, Pacman, Tyshon, and Rookie, and his sister Farrah (phonetic) was there.

[578] Q. Where were your kids?

A. They was at home.

Q. And did you all get to the gun show?

A. Excuse me?

Q. Did you all get to the gun show?

A. Yes.

Q. Did he say anything to you when you arrived at the gun show?

A. Just do what he told me to do.

Q. Did he say anything else?

A. He told me that somebody was there with my kids, and it is not nothing but a phone call away.

Q. Had your kids been left at home or not?

A. Yes.

Q. Had they been left at home?

A. Yes.

Q. How did you feel at that time?

A. I was afraid. I didn't know what to do.

Q. Did you all go in to the gun show?

A. Yes.

Q. Where was the first gun show?

A. At the Market Hall.

Q. Do you remember the first gun that was bought?

A. Yes.

Q. Okay. Which one was that?

[579] A. The .380s.

Q. Do you remember who that was bought from?

A. Who the dealer was?

Q. Yes.

A. No.

Q. Was it one of the people we saw yesterday?

A. Yes.

Q. Okay. Can you remember in particular which one?

A. I believe it was the first one.

Q. Now, did somebody—Well, did you decide what guns to buy or did somebody else decide?

A. Somebody else decided.

Q. Who decided?

A. Pacman.

Q. How did you know that is what he wanted you to do?

A. Because he told me—He pointed at me and showed me what it was that he wanted me to purchase.

Q. When you went to Mr. PrInington's tables, were you by yourself?

A. No.

Q. Who was there? Pacman and Hookie.

Q. Did you talk to somebody at those tables?

A. Yes.

Q. Do you remember in particular which one you talked to?

[580] A. I talked to the lady first.

Q. And do you remember your conversation with her?

A. No.

Q. It is okay. How did you feel while you were there?

A. I was nervous.

Q. Did you—Who did you talk to about or who did you tell you wanted to buy the guns? Do you know?

A. I told the lady.

Q. Do you remember what happened after that?

A. She told the guy and he said "I have to fill out the forms."

Q. Okay. And when you—Did you go fill out the forms?

A. Yes.

Q. Is there somebody there with you?

A. Yes.

Q. Who was there with you?

A. Hookie was standing behind me.

Q. Okay. Did you fill out the forms on your own, or did somebody tell you what to put on the forms?

A. Pacman walked up. I had just started filling out my name and stuff off of my driver's license on it, and Pacman walked up and told me to fill the forms out exactly the way he told me to.

Q. And did you do that?

A. Yes.

[581] Q. Why did you do what he told you to?

A. Because I was afraid of him.

Q. When you filled out the forms, there was a statement on there about whether you were under indictment.

A. Yes.

Q. Did you fill that out?

A. Yes.

Q. Okay. Did you tell the truth there?

A. No.

Q. Did you know that wasn't true?

A. Excuse me?

Q. Did you know that when you made the statement that you were not under indictment, that that was not true?

A. Yes, I did.

Q. Did you have a conversation with Mr. Pennington about the court system?

A. Yes.

Q. Would you tell the jury about that?

MS. HEATH: We object to the relevance about the court system with Mr. Pennington.

THE COURT: Overruled. You may ask.

MR. JETT: Q. You may answer the question?

THE WITNESS: A. I told him I was in the court system. And he asked me had I been sentenced yet, and I told him no. And he told me he was going to run it through and see [582] what it come back as.

Q. Was that okay with you?

A. Yeah.

Q. When you all were looking at the guns, did anybody else ask about the guns other than you?

A. They was picking the guns up and looking at them.

Q. Who is "they"?

A. Pacman and Hookie and Tyshon.

Q. Did you think you should be buying the guns?

A. No.

Q. What did you think when it came through?

A. I knew I wasn't supposed to be buying the guns, but when it came through I was like, "Well, you know, they told me I was not supposed to be around guns, and I knew I was in the court system and why was it coming back, why was, you know, why did he get me approved? He shouldn't have got approval because I knew I was in the court system."

Q. Did you feel like you were free just not to buy the guns?

A. Did I what?

Q. Did you think you were just free not to buy the guns at this point?

A. Did I think I wasn't free to buy them?

Q. Bad question. Do you think that you—At the time that you bought the guns did you think you were free not to buy them?

A. I didn't think I was supposed to be able to buy them.

[583] Q. Let me ask this. What did you think would happen to you if you didn't buy the guns?

A. I would have to deal with Pacman.

Q. What were you afraid that he would do?

A. If he didn't hurt me, he was going to mess with my kids.

Q. Okay. Were you afraid about whether or not he would kill you?

A. Yes.

Q. Were you concerned about whether or not you or your kids might suffer serious bodily injury?

A. Yes.

Q. Now, did you think that he was going to do it right there in the gun show?

A. No.

Q. What were you concerned about?

A. I was concerned about my kids.

Q. when the sale went through, who took the package?

A, Pacman.

Q. Now, was this the only gun you bought that day?

A. No. When I was filling out the form, he told me to tell the man that they wanted two instead of one, so they bought two of them there.

Q. After you finished the purchase at this gun dealer, did you buy another gun?

A. Yes.

[584] Q. Okay. And do you remember what you bought?

A. It was a .22.

Q. Do you remember what it was called?

A. They call it a Tec-22.

Q. And did it have a particular feature to it?

A. Yes.

Q. What was that?

A. A laser.

Q. Is that the red laser that we have seen before?

A. Yes.

Q. Does it look like that?

A. Yes.

Q. Obviously it wasn't this, was it?

A. No.

Q. It was a—But it made the red dot like this?

A. Yes.

Q. Now, when you went to buy that gun, who was with you?

A. Me, Pacman, Hookie, Tyshon, and Farrah (phonetic).

Q. Did you go there by yourselves?

A. No, I didn't.

Q. Was somebody right there with you?

A. Yes.

Q. And who was that?

A. Me, Pacman, and Hookie.

Q. What happened when you bought that gun?

[585] A. They looked at the guns and they was undocided, they walked off, we walked off, and they came back and they said that that one was cheaper than what the other dealer had, so that is the one he wanted.

Q. Let me ask you, let me go back to the first one. How did you get the money to pay for those first two guns?

A. They gave them to me.

Q. How did they do that?

A. They—While they was running the check, they was calling—The guy had my driver's license and the paper, and he was on the phone talking to them, and he gave—They handed me the money. And then Hookie told him that he better give me enough for tax also so that I wouldn't have to turn around and ask for no more money.

Q. Okay. Did—And was this right out in the open where that happened where they gave you the money, or was it kind of slipped to you?

A. They slipped it to me.

Q. Now, when you bought the Tec, why did you buy that gun?

A. That is what they wanted.

Q. what were you afraid would happen to you if they didn't buy the gun?

A. something is going to happen to me and my kids.

Q. And that something, what were you afraid that would be?

A. He was going to kill us.

[586] Q. Now, you were afraid he was going to kill you right then or kill you later?

A. He was going to kill me later.

Q. And if you had just at that point run off somewhere, did you have any other fears of what would happen?

A. Yeah. Something is going to happen to my kids, because my kids wasn't with me.

Q. Now, when you paid for the Tec-22, again how did you get the money?

A. Pacman gave it to me.

Q. Was it right out in the open or did he slip it to you?

A. He slipped it to me.

Q. When you filled out the form, was somebody there when you filled out the form?

A. He was there.

Q. Did he give you any instructions about the form?

A. Just do it as I was told.

Q. Again, you filled out the form. Do you know that the information there was incorrect? Is that right?

A. Yes.

Q. Now, with this second man, did you bring out the fact you were in the court system?

A. No.

Q. Why not?

A. Because it didn't do nothing the first time.

[587] Q. How did you feel about buying the guns?

A. I don't like guns.

Q. Had you ever owned a gun?

A. No.

Q. Had you ever shot a gun?

A. No.

Q. Did you want guns in your house?

A. No, I didn't.

Q. How did you feel about what you did?

A. I felt bad about it, but I didn't know what to do.

Q. Were you afraid of anything if you tried to do something?

A. I was afraid what was going to happen to me and my kids.

Q. Now, the following week, the next few days after this first gun show, what was it like around the house for you?

A. It was worse.

Q. How is that?

A. I couldn't do anything. I was already unable to do anything. It just got worse. We fought even more. He was around. He was around even more. Instead of just him leaving and leaving people there, the majority of the time he was there.

Q. During the time between the two gun shows did you all fight?

A. Yes.

Q. what happened to you?

[588] A. I would get beat up.

Q. How many times would you get beat up?

A. Too many to count.

Q. Just in this week I am talking about—the week between the two gun shows.

A. About four or five times.

Q. During that week while you were getting beat up did you have any other concerns?

A. How could I get some help.

Q. Were you free to go places by yourself?

A. No.

Q. Were you free to call, use the telephone?

A. Sometimes I pick up the phone and somebody—If I pick up the phone Pacman ask me who I am calling, or either one of the other guys be in the back and pick up the phone and listen to the conversation. If somebody called for me, they will ask who it is what you want.

Q. During this week can you tell the jury whether or not you were afraid of anything?

A. Yes.

Q. What were you afraid of?

A. I was afraid of Pacman and them.

Q. Was—After he got this Tec-22, what did he do with this?

A. He carried it around with him everywhere.

Q. Did he play with it sometimes?

[589] A. Yes.

Q. What did he do?

A. He points it at me.

Q. What would he do when he pointed it at you?

A. Re asked me, he said, "you don't think I will kill you, do you?"

Q. What was your response?

A. And I told him yes.

Q. Did you say anything more?

A. I told him one time, "If you are going to kill me, just kill me because I am getting tired of you threatening me."

Q. Did he do that?

A. Did he do what?

Q. Obviously he didn't do that.

A. No, he didn't.

Q. When he would point the gun at you, what would also get pointed at you?

A. The laser.

Q. Is that the red dot?

A. Yes.

Q. Where would you—Would you see the red dot?

A. Yes.

Q. Where would you see it?

A. Sometimes he point it at my face, and sometimes I look down and it is on my chest.

[590] Q. Did he point it at anybody else?

A. He pointed it at my daughter.

Q. Which daughter?

A. Joycelyn.

Q. How did that make you feel?

A. I knew he was for real.

Q. When he would point the red dot at you, would he say anything, any other thing?

A. Sometimes he would say, "You know what this means?" And sometimes he would say, "You know I will kill you."

Q. Why didn't you go to the authorities?

A. I was afraid.

Q. What were you afraid about?

A. I didn't think anything would really get done because of my past history.

Q. Why didn't you tell Mr. Rodriguez in Pretrial Services?

A. I was afraid. I was afraid to tell anybody anything.

Q. Why were you afraid?

A. Because I didn't want nothing to happen to me or my kids.

Q. When did it come up to you that you all were going to another gun show?

A. On that Saturday, a week later.

Q. What happened?

A. When he woke me up he had the gun pointed at me.

Q. Did he say anything?

[591] A. I hit the gun, and I told him to stop. I said, I told him, you know, "I am afraid of guns. Why do you keep pointing these guns at me. Why do you keep doing me like this?"

Q. And what did he say?

A. He said he wanted me to realize he is for real and he is not playing.

Q. Did you go to a gun show that day?

A. Yes, I did.

Q. Where did you go?

A. we went to Mesquite, Big Town.

Q. Who went?

A. Me, Pacman, and A.D.

Q. Who was at the apartment when you left?

A. Hookie and Tyshon was there.

Q. How about your kids?

A. Queshi and Joycelyn was there.

Q. Before you went into the gun show, did Pacman say anything to you?

A. He told me I know the routine; I know what to do.

Q. At that point did you know what to do?

A. Yes.

Q. What did you think you were supposed to do?

A. I was supposed to fill out the forms and get the guns they point at.

Q. Did you go to the gun show?

[592] A. Yes.

Q. what happened at the first booth or tables that you went to?

A. I think—

Q. Do you remember which one was first?

A. I think the first one was the pistol.

Q. What do you remember about that one?

A. They looked at the guns, and A.D. told Pacman that that was the one he wanted. And they looked at one or two more, and Pacman tried to get him to get a different one and he didn't want that one, so he stuck with the same one.

Q. Did you all know what gun that was?

A. It was a nine.

Q. Did you have any trouble buying that one?

A. No.

Q. At the time you filled out the forms, did you know that what you put on the form was not true?

A. Yes, I did.

Q. And why did you do that?

A. Because that is what I was told to do, and I was afraid of Pacman.

Q. What did you think would happen to you if you refused?

A. He would kill me.

Q. Were you afraid—

A. Or something would happen to my kids.

[593] Q. Again, how did you get the money to buy that gun?

A. He gave it to me.

Q. What is the next transaction that you remember?

A. I think it was the rifle.

Q. Do you remember the order in which these occurred?

A. No. We went back to the same table. We went back to that same table where the nine was.

Q. And were you able to buy—Who wanted to buy the rifle?

A. It wasn't—I don't think it is a rifle. I think it was—I think you all call it an M something.

Q. Was it one of the pistols?

A. Yeah.

Q. Let me ask you this. Do you recall how many firearms that were purchased on that day, the 11th?

A. Four.

Q. Now, were they all—Were they all purchased for the people with you or were they purchased for somebody else?

A Two was purchased for the people that was with me. The other two was some guys I didn't know.

Q. All right. How did—What did you observe about how that happened?

A. After the first sale we was walking off, and we stopped and he started talking to these two.

Q. Who is "he"?

A. Pacman started talking to two Hispanic guys.

[594] Q. And did you overhear the conversation?

A. Him and Pacman, Pacman and one of the guys walked off, and A.D. and the other guy stood there with me.

Q. All right. And then what happened with these guys?

A. And then he came back and he said, "Come on." And we all followed him back to the same table.

Q. And who is "he"?

A. Pacman.

Q. What happened?

A. We went back to the same booth where they had just got the pistol at.

Q. And what happened there?

A. They picked up—It was folded, and they picked it up and the guy showed him how to open it. And then they put it back down, and it was a rack with some guns on it. They start looking at that, and then he said, "The one we just put down is the one we want."

Q. Okay. Now, do you remember which particular table or booth this was?

A. I don't remember the guy's name.

Q. Okay. You saw these guys yesterday. Do you know which one of those it was?

A. It was the—He looked like he was in his mid 40s or 50s, and he had an Army-type jacket. He had a green jacket on.

Q. But do you remember which one of the guys it was yesterday

[595] that testified, the gun dealers?

A. It was one of those.

Q. Do you remember which one?

A. No.

Q. Now, when that gun was bought, who was it bought for?

A. The second one?

Q. Oh-huh.

A. It was bought for the Hispanic guys.

Q. When you filled out the paperwork, was there somebody there with you?

A. Yea.

Q. Who was there?

A. Pacman.

Q. What was he doing?

A. He was standing behind me.

Q. Was he saying anything?

A. He just told me to do what I was supposed to do.

Q. Where did you get the money?

A. From Pacman.

Q. Did he give it to you right there at the table or somewhere else?

A. The guy was checking. He was on the phone when they gave it to me.

Q. Was it right out in the open or was it kind of hidden?

Q. It was hidden.

[596] Q. Did that sale go through?

A. Yes.

Q. Who took the package?

A. Pacman took the package.

Q. And after he took the package, what did you all do?

A. We walked off and I saw him hand it to the Hispanic guy.

Q. Do you remember where you all went after that?

A. We went to a table and they looked at two different types of guns there. And then they walked off, we walked off, and they went to another table. And they went back, and that is when they got the other gun that the other Hispanic guy got.

Q. Did you go to the same table or another one?

A. I went back to the same one that they had looked at.

Q. Okay. And did you buy another one of those?

A. Yes.

Q. Do you know which gun it was?

A. It was the 45.

Q. And again, where did you get the money for that?

A. Got it from Pacman.

Q. Who was it for?

A. Who was it for? It was for the Hispanic guys.

Q. Did you make that arrangement?

A. No.

Q. Who made it?

A. Pacman.

[597] Q. When you filled out the forms, who was there?

A. Pacman. They all was there,

Q. After the sale was finished, who took the gun?

A. Pacman did,

Q. What did he do with it?

A. We started walking off, and he gave it to the Hispanic guy.

Q. How about the last gun? Do you remember that?

A. The last one that was purchased?

Q. Uh-huh.

A. It was at that same booth.

Q. What was that?

A. It was a rifle.

Q. Again, did you fill out the forms?

A. Yeah.

Q. Did you put the same information in the forms?

A. Yes.

Q. Do you know that part of it was not true?

A. Yes.

Q. Why did you do that?

A. I didn't have a choice, I was afraid for me and my kids.

Q. Now, you heard testimony about one sale that did not go through?

A. Yes.

Q. All right. Do you have some memory of that?

[598] A. Yes, I do.

A. Do you remember some discussion about a social security number?

A. Yes.

Q. Did you put the social security number on the form?

A. Yes, I did,

Q. Did somebody ask you to do it or did you just do it?

A. He asked me to.

Q. What did he ask you?

A. He told me that—

MS. HEATH: Your Honor, I object to hearsay.

THE COURT: I think that is admissible to show the state of mind to do what she did.

MS. HEATH: Can we identify for the record exactly who was making the statement?

MR. JETT: Q. Do you remember who made the statement?

THE WITNESS: A. I don't remember his name.

Q. Do you remember which one it was yesterday?

THE COURT: Let me ask you first if it was one of the ones here yesterday.

MR. JETT: Q. Was it one of the ones that was here yesterday?

THE WITNESS: A. Yes.

Q. Do you remember which one it was?

[599] A. It was the one, he had a beard and he had his hair back. His hair was long.

Q. And so what did he ask you about this social security number?

A. He told me that they had been having—that a lot of people had to wait because the system was down, and also that a lot of people had been getting delays because there was a lot of people calling in. And he said by putting the social security number it will make it go quicker.

Q. Was that okay with you?

A. Uh-huh. Pacman, he punched me and said, "Do it." So I put the social security number.

Q. Had anyone else asked you to put in a social security number?

A. No.

Q. So you wrote that down?

A. Yes.

Q. And was it your idea to do that or was it somebody else's idea?

MS. HEATH: Your Honor, asked and answered.

THE COURT: Sustained.

MR. JETT: Q. Okay. After the—Well, after the form was filled out, what happened?

THE WITNESS: A. The other guy was on the phone with the paper and my driver's license, and then he said something [600] to the other guy, and the guy came over there where we was standing, and he said that he was delayed, and to come back in about 15 or 30 minutes.

Q. Did you do that?

A. Yes.

Q. When they were checking, was Pacman standing right there or was he standing somewhere else?

A. They was right behind me.

Q. And what did you all do after he told you to come back?

A. We walked around and looked at other guns.

Q. Did you come back?

A. Yes.

Q. What happened when you came back?

A. They said it was still a delay.

Q. And then what happened?

A. We walked off, and then he told me to come back and ask them, to go ask them why and find out why. And he was also saying, Pacman was also saying that they are trying to keep his money. If they keep his money, that is a price I am going to have to pay.

Q. Now, when you say he said that, are you talking about Pacman?

A. Yes.

Q. So what did you do?

A. We went back over there and I questioned the guy about it.

[601] Q. Okay. Were you upset about it?

A. I was upset because of what Pacman was saying to me, but I wasn't upset about the purchase.

Q. What happened after that?

A. The guy explained it, and then we left again and we walked around, walked around, and then we went back and he told me to tell him that—

Q. Who is "he"?

A. Pacman. He told me to tell them that we had made a purchase somewhere else. And the guy said that was weird, and he don't understand why it was taking so long. "Maybe the system is down." And he told me do I remember what booth it was. I told him yeah. He said if I can go get some— He called the number something, and told me if I can go get it from the salesperson, he can call them back about it and find out what is going on.

Q. Did that happen?

A. Yes.
Q. And so what did you do?
A. I went back and r asked the guy about it.
Q. And then what did you do?
A. Then I took the number back to him.
Q. And after that did that make a difference?
A. No, it didn't.
Q. was that sale completed?
[602] A. No.
Q. Now, all the things that you did to try to complete the sale, was that something that you wanted to do?
A. No, it wasn't.
Q. Why were you doing those things?
A. Because I was threatened.
Q. And who threatened you?
A. Pacman.
Q. And what were you afraid of at this time?
A. I was afraid Pacman was going to kill me.
Q. Again, were you afraid he was going to do it right there or do it at a later time?
A. He was going to do it, but I didn't think he was going to do it there.
Q. After this sale didn't go through, what did you all do?
A. We ended up going back to another booth; the booth where one of the other guns was purchased from.
Q. Did you make a purchase there?
A. Yes.
Q. How many guns did you buy that day?
A. Four.
Q. And who were the two .45s for?
A. The Hispanic guys.
Q. And who were the other two for?
A. A.D. and Pacman.
[603] Q. Now, again when you bought these guns, did you do that of your own free will?
A. No.

THE COURT: Counsel, you have been over that now. We have covered that sufficiently. Let's get on to something else.

MR. JETT: Q. When you all left the gun show, was there something that was—Who had the guns when you all left the gun show?

THE WITNESS: A. The Hispanic guys had the .45 boxes, and Pacman and A.D. both had a box in their hand.

Q. Did you have a box?

A. No. I had the papers.

Q. When you say "the papers," what do you mean?

A. It was the receipts.

Q. Was anything happening as you walked out of the gun show?

A. Yes.

Q. What was that?

A. They was checking the gun boxes and they was checking the receipts with them.

Q. Did they check the guns that Pacman and A.D. were carrying?

A. Yes.

Q. How about the two Hispanic guys?

A. They didn't go out at the same time we did. We was still [604] in there. They left.

Q. But you had their paperwork?

A. I had the papers in my hand.

Q. After the gun show, where did you all go?

A. Back to my apartment.

Q. And when you got back to the apartment, did you want to go do anything?

A. I wanted to go to the grocery store.

Q. Did you do that?

A. No.

Q. Why not?

A. Because Pacman told me he had stuff to do, so I had to wait.

Q. Did you get to go at all?
A. About two days later.
Q. Did you go by yourself?
A. No.
Q. Who went with you?
A. Me and Hookie,
Q. Did Hookie go to some other places with you all?
A. Yes, he did.
Q. Where is that?
A. Church.
Q. And what Sundays did he go to church with you?
A. Every Sunday I went.
[605] Q. Okay. Let's talk about January; okay? Did you go to church in January?
A. Yes, I did.
Q. Did somebody go with you?
A. Yes.
Q. Who was that?
A. It was me, Hookie, and my kids.
Q. From your observation of Hookie—What is Hookie's name again?
A. Cory Sanders.
Q. From your observations of him, was he going for religious reasons?

MS. HEATH: Dour Honor, we will object to that as speculation. I don't think you can just necessarily look at somebody and tell the reasons they go to a religious service.

THE COURT: She may know based on conversations they had, or whatever, if she has a basis for knowing.

MS. HEATH: Then we object to hearsay.

THE COURT: She can answer the question whether he was going for religious reasons. You may answer that.

MR. JETT: Q. Did he appear to be going for religious reasons?

THE WITNESS: A. I hadn't known him going to church before.

Q. Okay. What did it look like to you that he was going for?

[606] MS. HEATH: Your Honor, we object to speculation.

THE COURT: Overruled. She may answer. Overruled.

THE WITNESS: A. I hadn't been allowed to he going anywhere by myself, but I thought that at least that when I said I was going to go to church that I was going to end up being able to go by myself, but I wasn't. Pacman told him that he was going to go, and I had to sit there and wait until Hookie got from his mother's house. The first Sunday we went that Hookie went, Hookie was at his mother's house and Pacman was there, and Pacman was going and he got a page and said that he wasn't going, and then told me that he had called Hookie and Hookie was going with me. So I had to sit there and wait until Rookie got there, and it would be all right for me to leave.

Q. The week after this second gun show what happened to you?

A. I got sentenced.

Q. When you were going to court, that was the 15th of January. Is that right?

A. Yes.

Q. When you were going to court, what did you think was going to happen to you?

A. I knew I was going to end up getting some time, but I didn't know how much.

Q. What did you think would happen in regard to your situation with—Let me ask this first. Did you think you were

going to have to start your time right then or get to wait [607] until later?

A. I thought I was going to have to go then.

Q. Did you have any ideas about what getting sentenced might do to your situation?

A. I would get away from Pacman.

Q. And what would happen with your kids?

A. They would end up going with my mother.

Q. Okay. Did you get sentenced that day?

A. Yes, I did.

Q. And what sentence did you get?

A. I got 12 months.

Q. Did you have to start serving your sentence at that time?

A. No. The judge was giving me 30 days to turn myself in, self-surrender.

Q. What was—When you were going to go in, what was going to happen with your girls?

A. I had planned on them going and staying with my mom during the 12 months, but Pacman had other ideas.

Q. What were his ideas?

A. He was talking about he was going to keep the apartment and the girls stay there. And we argued about it and fussed and fighted about it, and then he came up with the idea that he was going to keep my apartment and that my girls was going to go stay with his sister.

Q. And how did you feel about that?

[608] A. I didn't want neither one.

Q. Why?

A. Because I was—When I got the time I was happy when I got sentenced because I was feeling like this is my way of escaping from Pacman, and I end up in jail and my kids will end up in Greenville with my mother.

Q. After you were sentenced, did your relationship with Pacman change?

MS. HEATH: Your Honor, we object to this as beyond the time frame. The period of buying guns is now over. We object to the relevance of it.

THE COURT: Relevancy?

MR. JETT: Just to show that it was ongoing. I mean, I was going to go up to the time she was arrested.

THE COURT: I will sustain the objection. I think it is relevant to the duress offense. After that it is not relevant to anything the jury has to decide. So sustain the objection.

MR. JETT: Q. When did you get arrested?

THE WITNESS: A. On February the 3rd.

Q. What day of the week was that?
A. I believe it was a Monday.
Q. And where were you arrested?
A. Here at the federal building.
Q. You have been in jail since that time?
[609] A. No, I wasn't.
Q. Have you been out of jail since February 2nd when you were arrested? Where have you been staying?
A. I was staying at my apartment.
Q. You got arrested on February the 3rd. Right?
A. Right.
Q. Okay. After February the 3rd where have you been living? Have you been in jail?
A. I have been in jail.
Q. Have you been serving your sentence?
A. Yes.
Q. So when did you start serving your sentence?
A. On February the 3rd.
Q. Now, when you were arrested, did you talk to the agents?
A. Yes.
Q. Did you tell them about guns?

A. Yes.

Q. What did you tell them?

A. I told them that there was three guns there.

Q. Did you believe there were three guns there?

A. It was three guns there. I had seen them about three days before I got arrested.

Q. All right. Was Pacman—Before you got arrested, the night before you got arrested, can you tell the jury, was Pacman at your house or not?

[610] A. Yes, he was.

Q. When you talked with the agents, did you think the guns were there?

A. Yes, because I didn't see anybody walk out with them.

Q. The ammunition that was found, did that belong to you?

A. No.

Q. Who did it belong to?

A. It belonged to Pacman and Hookie.

Q. Did you buy any of those things?

A. No.

Q. The boxes, did they belong to you?

A. No.

Q. Did you own a gun?

A. No, I didn't.

Q. Did you buy a gun for yourself?

A. No.

Q. When you bought those guns, did you think you had a choice?

A. No, I didn't. I didn't think I did.

Q. And what did you think would happen to you?

A. I thought Pacman would kill us.

Q. And who is "us"?

A. Me and my children.

MR. JETT: Pass the witness.

THE COURT: Ms. Heath?

[611] CROSS EXAMINATION

By Ms. Heath:

Q. Good morning, Ms. Dixon.

A. Good morning.

Q. Now, you mentioned that you met Pacman at a liquor store in about August of 2002. Is that correct?

A. Yes, ma'am.

Q. And in August of 2002, you were already living on Melody Lane?

A. Yes.

Q. So during the time that you knew Pacman you have only had two residences—one on Melody Lane and one on Forest Springs?

A. Yes.

Q. And the Melody Lane address was a one bedroom, and the Forest Lane address was a two bedroom?

A. Right.

Q. Prior to the Melody Lane address you have been living on Skillman, which is reflected on your license. Is that correct?

A. Yes, ma'am.

Q. And you moved from the Skillman address to the Melody Lane address in July of 2002, the summer of 2002.

A. Yeah.

Q. And at the Skillman address you had been living with Tabyrai Sweat?

A. Yes.

[612] Q. And his mother Beverly?

A. She ended up moving in with us.

Q. In fact, you have used Beverly's name as a reference in applications for jobs, have you not?

A. Yes, I have.

Q. You relied on her and trusted her?

A. Yes.

Q. You thought that she felt strongly about you enough to give a good recommendation about you?

A. Yes,

Q. And you had differences with Tabyrai, did you not?

A. I had differences with who?

Q. You split up with Tabyrai Sweat?

A. Yes.

Q. In fact, there were some arguments and some fighting involved in that relationship as well?

A. Yes.

Q. Now, during all of the fighting that you told the jury about, you were also raising your voice. Isn't this true?

A. Yes, because I didn't want to do what I was told to do.

Q. And you resisted when they would tell you to do something and you didn't want to do it?

A. Right.

Q. And you made it known to whoever was telling you what you should do that you did not want to do these things?

[613] A. Exactly.

Q. And if there were things being thrown, you were part of throwing things as well?

A. Yes.

Q. And if there was hitting happening, you were hitting as well?

A. Yes; trying to defend myself.

Q. But also you were angry about being told what to do?

A. Because z didn't want to do it.

Q. Prior to living on Skillman with Tabyrai Sweat and his mother, did you live in an address on Abram's Road?

A. That is his mother's address.

Q. And did you live with his mother at that location or stay with her with your kids?

A. Yeah; until our apartment was ready.

Q. So there were two different residences that you actually lived with Tabyrai sweat or his mother?

A. Yes.

Q. So you have known her for quite a long time?

A. For a little bit.

Q. Now, you mentioned that you were married to Ted Dixon from 1991 through 2001.

A. Yes.

Q. And that was a physical, relationship; a violent relationship.

[614] A. Yes.

Q. But it is the same situation. He would yell; you would yell?

A. Yes.

Q. You didn't like what he was telling you to do, or you didn't like restrictions he was placing on you?

A. Right.

Q. You would have arguments about money?

A. Ted was more controlling. He wanted everything done his way.

Q. He didn't want you to go out and have a good time without him.

A. It wasn't just basically that. It was that when I wasn't working he wanted me to be sitting up at his job with him, When I got ready to leave to go somewhere, I had to call him and let him know where I was going, And he would call me to see if I am at the place I am saying I am going, and just so on.

Q. He didn't want you to go out and about without knowing where you were.

A. Right,

Q. And you didn't like that.

A. No. I couldn't even go to the grocery store without calling him.

Q. And that got violent where both of you were hitting each [615] other.

A. I was defending myself.

Q. And things were being thrown?

A. Yes.

Q. And at some point during that relationship, towards the end of the relationship you got a restraining order against him?

A. Yes.

Q. You sought help from the authorities?

A. Because of something that happened to my child.

Q. But you got a restraining order?

A. Right.

Q. And then you filed for divorce?

A. It was later; yes.

Q. You had an attorney to help you with that?

A. No. Ted filed the divorce.

Q. But there was an attorney involved in that divorce?

A. I was under the impression there was an attorney involved, and I found out there wasn't,

Q. For a short time after you left or you left Ted Dixon, you actually went back to Greenville for a while.

A. I was there for a couple of weeks.

Q. And you were dating a guy in Greenville for a while, for a short period of time?

A. Yes.

[616] Q. There was another guy named Chris that you dated for a short period of time?

A. Yes.

Q. And then you told the jury about your check counterfeiting scheme that you were involved in. Do you recall that?

A. Yes, I do.

Q. And you told the jury that you were having some financial problems, and you got caught up in this check counterfeiting scheme?

A. Yes.

Q. And you also recruited other people to cash counterfeit checks.

MR. JETT: I object. The details of that are not relevant to this.

THE COURT: Overrule the objection. She may ask.

MS. HEATH: Q. You recruited other people to go out and cash counterfeit checks.

THE WITNESS: A. Yes.

Q. So it is not just you going to the store and cashing a counterfeit check.

A. No.

Q. You recruited other people, gave them the check, told them where to go, and collected the money when it came back?

A. Yes.

Q. And during this period of time you were living with a [617] William Thomas?

A. Yes.

Q. And his nickname was Hollywood?

A. Right.

Q. Hollywood carried a gun on occasion.

A. Yeah, he did.

Q. And in fact one time—And during this period of time that you are dating either Chris or the other person from Greenville, or living with William Thomas, the guy nicknamed Hollywood—

A. Chris is Hollywood. That is the same person.

Q. So William Thomas is also Chris who is also Hollywood?

A. Yes.

Q. During this period of time, Ted Dixon is still in your life because you share a daughter Divinity.

A. Yes.

Q. And he has visitation?

A. Yes.

Q. And he is pretty good about getting over there every week if not every other week.

MR. JETT: I object to the relevance of the visitation arrangements.

THE COURT: Overruled. Go ahead.

MS. HEATH: Q. And he would take Divinity on visitation during weekends or during the week?

[618] THE WITNESS: A. He got Divinity when he got time to get Divinity?

Q. And there are occasions when he took the older girls because he developed somewhat of a relationship with them?

A. He had to work on weekends. When he did have Divinity he didn't have anybody to stay with Divinity, so he would ask one of them to come stay there instead of Divinity staying by herself.

Q. So the answer is yes, on occasion he would have the other girls as well as Divinity?

A. Sometimes; yes.

Q. In fact, you have called on Ted on occasion to either take the girls to school or pick them up on occasions when you could not get there.

A. Right.

Q. And to some degree you confided in Ted about some of your relationships about the problems you have had?

A. Yes, I have.

Q. About how violent they were or physically abusive they were?

A. Yes.

Q. Or the problems you had about them running around with somebody else?

A. No. He had called a couple of times to talk to Divinity, and he heard us arguing and he asked me what was going on.

[619] Q. In fact, one time when Ted had come by the house, Ted Dixon had come by the house, when you were living

with Hollywood, Hollywood and you had an argument and Ted called the police.

A. No, that is not true.

Q. And Hollywood actually went in back to the apartment to get a gun to scare Dixon off?

A. That is not true.

MR. JETT: This is not relevant to the case or the defense.

THE COURT: Overrule the objection. Go ahead.

MR. JETT: Can I have a running objection?

THE COURT: No, sir. You need to ask each specific one. I am not sure which ones you are complaining about, so you need to make a specific objection.

MS. HEATH: Q. Now, you mentioned that in December of 2002, you had just lost the job with Stone Way Private School. Is that correct?

THE WITNESS: A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. The Stone way Private School, you applied for that job in about May, the Spring of 2002. Do you recall that?

A. I believe so.

Q. And in the Spring of 2002 you were already under [620] indictment for an offense.

A. Yes.

Q. You did not disclose to the daycare center that you were under indictment for a felony offense?

A. They did a background check.

Q. In fact, that is the reason why you were dismissed from the location, because the background check came back from the state and showed that you were under indictment?

A. No, it didn't.

MS. HEATH: Your Honor, may I approach the witness?

THE COURT: Yes.

MS. HEATH: Q. Are you familiar with a man by the name of Danny Stone?

THE WITNESS: A. Yeah.

Q. And Danny Stone is the owner of the Stone Way Schools, is he not?

A. Yes.

Q. Let me show you a two-page document and ask you if you recognize that.

A. Yes.

Q. Is that your application to the private school?

A. Yes, that is my application.

Q. Do you see anywhere on the application where you advise them about the fact that you were under indictment?

MR, JETT: Excuse me, Judge. This is testimony about [621] a document that is not in evidence, and I would like to see what it is that counsel is having her look at.

THE COURT: She may ask her, and then show it to counsel.

THE WITNESS: A. Yes.

THE COURT: She has identified it as her application.

THE WITNESS: A. That is my application.

MS. HEATH: Q. The question was, did you see anywhere in here that you indicated that you were under indictment?

MR. JETT: Judge, may I see the document?

THE COURT: As soon as she answers the question, counsel.

THE WITNESS: A. I don't see anything about indictment.

MS. HEATH: Q. Did you disclose to the Stone Way Schools that you were under indictment for a felony offense at the time?

A. No.

Q. And you were terminated on December 13th, 2002, were you not?

A. Yes.

Q. And a background check came back from the state showing that you—

A. That is not why I was terminated.

[622] Q. You said that Ted Dixon—

MR. JETT: Counsel is talking about matters that are not in evidence.

THE COURT; Well, you went into that, counsel. You went into that job and why she was fired, so I think she is entitled to go into it.

Ms. HEATH Q. You said Ted Dixon had called the school to let them know you were under indictment?

THE WITNESS: A. That is what they told me.

Q. And they fired you because of that?

A. Yes.

Q. Because you were under indictment?

A. Yes; because I told her; yes. I didn't deny it when she asked me.

Q. But you hadn't disclosed it to them since May 2002 when you were under indictment until they found out and fired you December 12th, 2002,

A. Because Pretrial had told me that if they don't ask you if you are under indictment don't give the information; don't volunteer it.

Q. So Pretrial wants you to conceal information from your employers.

A. He told me if it wasn't—if they didn't ask me to give it to them, don't volunteer it.

Q. That is Louie Rodriguez?

[623] A. Yes.

Q. And prior to the job at Stone Way Schools, you worked for Walnut Place; isn't that true?

A. Yes. I was there a minute.

Q. You were there—Excuse me?

A. I was there for a minute.

Q. For a minute?

A. Yes.

Q. Was that from January 17th, 2002 to February 19th, 2002?

A. Yes.

Q. Barely a month?

A. Yes,

Q. And you were fired from that job because of unexcused absences?

A. I was sick a lot.

THE COURT: Let's go ahead and take the morning break. Let's go ahead and take a 15-minute recess. (Whereupon, the jury left the courtroom)

THE COURT: All right. Take a 15-minute break.

(Brief Recess)

THE COURT: Ready for the jury? Let's bring in the jury.

(Whereupon, the jury entered the courtroom)

THE COURT: Ms. Heath?

[624] MS. HEATH: Thank you, Your Honor.

MS. HEATH: Q. Ms. Dixon, while you were living at the Melody Lane address, which is the address right before Forest Springs, that is when you started dating and living with Pacman on and off.

THE WITNESS: A. Yes.

Q. And he didn't live there full time?

A. No.

Q. He had another residence some place else?

A. Yes.

Q. And that residence was on Peavy Lane. Is that correct?

A. I don't know anything about Peavy Lane.

Q. You don't know anything about a residence on Peavy Lane?

A. No.

Q. Did you ever live at a residence on Peavy Lane?

A. No, ma'am.

Q. Now, during the time you were living on Melody Lane, that is when your relationship with Pacman started getting a little rocky?

A. That is when I met him was Melody Lane.

Q. And you moved into the Forest Springs address like the second week in December of 2002.

A. Yes, ma'am.

Q. And when you moved into the new address, you had just gotten back together with Pacman?

[625] A. Yes, ma'am.

Q. You were separated for a little while?

A. He never stopped coming around.

Q. nut in your mind you were separated?

A. Yeah; in my mind, yes.

Q. So he is not living there anymore; he just comes around to visit?

A. He still had clothes there, but he was still coming around. But he wasn't—

Q. He wasn't sleeping there at night?

A. He didn't sleep there; no.

Q. So he would go some place to sleep?

A. No.

Q. He was not sleeping there?

A. No.

Q. In fact, you just had one bedroom there?

A. Right.

Q. And then you move into Forest Springs in December of 2002, and he is back in your life again?

A. Yes, ma'am.

Q. And sometimes he stays at that apartment at the Forest Springs address?

A. Yes, ma'am.

Q. But not every night?

A. Sometimes he didn't show up until 6:00 or 7:00 in the [626] morning.

Q. Sometimes he would spend it away?

A. Yeah.

Q. And if he was supposed to be your boyfriend, that made you angry.

A. No, it didn't.

Q. And you had some arguments about that?

A. No. It is when he was gone in my car and he didn't bring my car back until that time in the morning, yeah, we argued about that,

Q. Because you needed your car for the morning?

A. Yes, ma'am.

Q. Either to take the girls to school?

A. Yes, ma'am.

Q. Or to take them to visit relatives, or things like that?

A. Yes, ma'am.

Q. So you move into Forest Springs right before the holidays, the Christmas holidays?

A. Yes, ma'am.

Q. And during the Christmas holidays you are visiting relatives?

A. I didn't go visit relatives.

Q. And your girls got to see their grandmother?

A. Yeah, I sent them to Greenville for Christmas.

Q. Okay. And they got to stay in Greenville for Christmas [627] for a period of time?

A. Yeah; they was there.

Q. And you have got a good relationship with your stepfather?

A. Yes.

Q. And he lives with your mother still?

A. Yes.

Q. And they have lived in Greenville for years and years and years?

A. Yes.

Q. And your real father lives in Greenville as well?

A. Yes, he does.

Q. And you have developed a relationship with him since being an adult?

A. Yes.

Q. And all three of them love the girls, love their grandchildren?

A. Yes.

Q. And they want to see them as much as possible?

A. Yes.

O. And you have sisters and brothers?

A. Yes, I do.

Q. Who also love the girls?

A. Yes.

Q. And your girls love them?

A. Yes.

[628] Q. And if need be, knowing you are going to prison, you have a family that can take care of your kids.

A. Yes.

Q. So you knew your mother was available to take care of your kids?

A. Yes.

Q. And you have talked to your relatives about the fact that "I may be going to prison. I need somebody to take care of the girls."

A. They didn't find out about it until the last minute.

Q. Until the last minute?

A. Yes.

Q. So you made no preparations as mother, knowing you were going off to prison, and leaving three girls under the age of 15 by themselves in their apartment?

A. No, that is not it.

Q. So you did make preparation?

A. They didn't know anything about the case until I found out that I may end up getting prison time. That is when they found out about it.

Q. And that was around the Christmas holidays?

A. No. I told my mother before that.

Q. So the Thanksgiving holidays?

A. I believe it was in October when I told my mother about it.

Q. So as of October, November, December, and January, going [629] up to your sentencing date, you are talking with your family members about preparations for your daughters?

A. Uh-huh.

Q. Where they need to go to school?

A. I talked to my mother.

Q. You also talked to Ted Dixon about the possibility of him keeping the girls while you were in prison?

A. Yeah. He was saying that they didn't want to go to Greenville. He had talked to Divinity and they didn't want to go to school in Greenville; they wanted to stay in the schools they was in in Dallas.

Q. And the girls told you that, too?

A. Yeah. They said they wanted to stay in school in Dallas.

Q. And they didn't have any problem in staying with Ted Dixon while you were in prison if they could stay in the schools here in Dallas?

A. Queshia and Joycelyn didn't, but Divinity did.

Q. So you talked to Ted Dixon about that?

A. Yes. And I told them that I didn't want them to be separated; I wanted them to be together, and he agreed with it.

Q. And Ted Dixon did not have any problem if all three girls wanted to stay with him, keeping all three girls?

A. Yes, he did tell me that.

Q. So as of December 2002 you are moving into a new apartment with two bedrooms?

[630] A. Yes, ma'am.

Q. You have Pacman back in your life?

A. Yes, ma'am.

Q. You lose your job?

A. Yes, ma'am.

Q. You have been making regular visitations to Louie Rodriguez, your Pretrial Services officer?

A. He was coming by once a month visit.

Q. So you were seeing him once a month at least?

A. Yes.

Q. And during that once a month, things he is concerned about are where you are living?

A. Yes, ma'am.

Q. who are you living with?

MR. JETT: Excuse me, Judge. I am going to object to what he is concerned about. That would be hearsay. She wouldn't have personal knowledge.

THE COURT: Overrule the objection. She may answer.

MS. HEATH: Q. You are providing him information about where you are living?

THE WITNESS: A. Yes, ma'am.

Q. And about who you are living with?

A. Yeah, I think so. I think that is one of the questions, too, that he asked.

Q. And where you are working?

[631] A. Yes.

Q. And you know that that was one of your conditions, that you are supposed to stay employed?

A. Yes.

Q. And during the times when you were not employed, you knew that you had to seek new employment?

A. Yes, ma'am.

Q. That was a condition?

A. Yes, ma'am.

Q. So when you lost the job at the daycare, you knew that you were going to need to look for a new job?

A. Yes, ma'am.

Q. Because Louie Rodriguez was going to be checking up on you?

A. Yes, ma'am.

Q. And these regular visits to Louie Rodriguez would continue so long as you remained out on bond?

A. Yes, ma'am.

Q. Now, you actually pled guilty to the counterfeit check case November 6th of 2002. Isn't that correct?

A. Somewhere around there. That is correct,

Q. So it is while you are still living on Melody Lane?

A. Yes, ma'am.

Q. So you appear in court that day and you plead guilty?

A. Yes, ma'am.

Q. And in preparation for that you meet with your attorney?

[632] A. Yes, ma'am.

Q. Arid then you have a meeting with Pretrial or the Probation Department so they can prepare a report for the Judge.

A. Yes, ma'am.

Q. That is Lisa Lamb, I believe?

A. Yes, ma'am.

MR. JETT: Excuse me, Judge. I object to the relevance of this.

THE COURT: Overruled. Go ahead.

MR. JETT: May I say one thing, Judge?

THE COURT: Yes.

MR. JETT: This is prior to the December time frame when we are talking, and so I just question the relevance.

THE COURT: I understand the objection, but I think she is entitled to go into it. Overruled.

MS. HEATH: Q. And the meeting with the probation officer Lisa Lamb was at the end of November of 2002.

THE WITNESS: A. Somewhere around there; yes.

Q. And you had a lengthy conversation with her about the case and about your personal background.

A. Yes, ma'am.

Q. And at no time during that conversation did you tell her you were having any problems with any relationship?

A. No, ma'am.

Q. And you knew your sentencing was set on January 15th, [633] 2003?

A. Yes, ma'am.

Q. And you told the jury earlier you thought there was a possibility that as of that day you may be going to jail.

A. Yes.

Q. And you were—You indicated to the jury that you were somehow looking forward to that only because it would get you away from Pacman?

A. I knew I was going to be punished for the case because I had pled guilty, and I knew I had did something wrong. That is why I pled guilty to it. And I had talked with my attorney, and I knew there was a possibility I may end up getting jail time. So yes, ma'am.

Q. So during November and December and January you have conversations also with your attorney on the phone?

A. A couple of times.

Q. And you actually go to his office on occasion?

A. I think I went one time.

Q. But you told the jury earlier that the day that you were going to be sentenced on January 15th, that you thought you were going to jail that day?

A. When I got sentenced, when they told me 12 months, didn't know I was going to have no 30 days to turn myself in. I thought I went then.

Q. So the answer was yes, you thought you were going to jail [634] on January 15th when you were sentenced?

A. Yes, ma'am.

Q. And you told the jury earlier that that would get you away from Pacman?

A. Yes, ma'am. But it didn't?

A. No, it didn't.

Q. You had to go home?

A. Yes, ma'am.

Q. And during your sentencing hearing, you had your mom up here in the courthouse?

A. Yes, ma'am,

Q. And you had Ve'Queshia, your oldest daughter, up here?

A. Yes, ma'am.

Q. And you had some other relatives up here. Who was up here with you?

A. There was—It was me, my daughter, my mother, and my uncle, and Ted was here.

Q. And your uncle's name is?

A. Donnie Sephus (phonetic).

Q. And Ted Dixon, your ex-husband, was up here?

A. Yes, ma'am.

Q. And so you had a support group ready to take care of the girls in the event you were taken to prison that day?

A. Yes, ma'am.

[635] Q. And earlier that day you actually met with your attorney prior to coming into the courtroom?

A. Yes, ma'am.

Q. And at no time did you tell your attorney or tell your family members that were here, tell Ted Dixon, tell the Court, tell any of the security officers that work in the building, the security at the first floor when you come through the magnetometers, any of the security on the court floor, that you were having problems, you had been harassed, threatened, forced to buy guns?

A. No, ma'am, I didn't.

Q. You didn't tell them that your life was in danger?

A. No, ma'am.

Q. You didn't tell them that your daughters' lives were in danger?

A. No, ma'am.

Q. You didn't tell them there was a man pointing guns at you and your daughter?

A. No, ma'am.

Q. You didn't tell them, "Please send a police vehicle out to my house to get my other daughters, or out to the school to get my other daughters"?

A. No, ma'am.

Q. They were in school that day, were they not?

A. Yes, ma'am.

[636] Q. In fact, that same day you met with Louie Rodriguez, your Pretrial Service officer, did you not?

MR. JETT: What day are we talking about?

MS. HEATH; January 15th.

THE WITNESS: A. I don't remember meeting him that day. I remember going to Mr. Jett's office.

MS. HEATH: Q. Ms. Dixon, let's go back to January 4th, THE first day of the gun show. It is your testimony that the gun show TOPIC came up the day before?

A. Yes, ma'am.

Q. Which would have been January 3rd, 2003?

A. Yes, ma'am.

Q. On January 3rd, 2003, you said that you were pretending to be asleep because you had overheard some talk about going to a gun show?

A. I had got up and went to the restroom, and when I got back in bed I heard them in there talking.

Q. Did you not say that you were pretending to be asleep?

A. Yes, I was.

Q. So the answer was you were pretending to be asleep?

A. Yes,

Q. And while you were pretending to be asleep, Pacman comes in and points a gun to your head?

A. Yes.

Q. And asks you if you are asleep, "Wake up. We are going to [637] the gun show"?

A. He told me there was something he needed to me to do. And then I said, "What?" And he is still talking about the gun show.

Q. So he basically put a gun to your head?

A. Yes.

Q. Told you you are going to go to the gun show?

A. Yes, ma'am.

Q. To buy more guns to put to your head?

A. Yes, ma'am,

Q. Or to put to anybody else's head?

A. Yes, ma'am.

Q. But that is not going to happen that day. That is going to be the next day?

A. Yes, ma'am.

Q. So for the Test of that day you know that the next day you are going to go to the gun show?

A. It was late that night when he told me that he was—It was late. It was real late that night.

Q. So you weren't just waking up in the morning. This was late at night?

A. Yes, ma'am.

Q. So it is late at night on Friday night?

A. Yes, ma'am.

Q. And so you go back to sleep for the rest of the evening. [638] Is that a yes?

A. Yes, ma'am.

Q. And Pacman spends the night in the apartment?

A. Yes, ma'am.

Q. The girls are in the apartment?

A. Yes, ma'am.

Q. You wake up the next morning. Is that correct?

A. Yes, ma'am.

Q. You don't go immediately to the gun show.

A. No, ma'am.

Q. In fact, you don't buy your first gun until 3:00 in the afternoon.

A. I don't know what time it was.

Q. Do you remember it was the afternoon?

A. Yeah.

Q. So for that whole morning you know you are getting ready to go to the gun show to buy guns?

A. It was about an hour after he woke me up that we left.

Q. Okay. So you slept until about 2:00?

A. Yeah. I don't know for sure what time it was.

Q. So you didn't get up and go back to sleep. You just slept through to 2:00 on Saturday?

A. Yeah; because it was real late that night.

Q. All these friends that Pacman has around the apartment during this period of time, they are his friends or family [639] members?

A. Yes, ma'am,

Q. Except for A.D. who is Ve'Queshia's boyfriend?

A. Yes, ma'am.

Q. And A.D. is about 18 years old, or 17 at the time?

A. He was 17.

Q. And at the time Ve'Queshia was 14?

A. She was 15.

Q. Fifteen?

A. Yes, ma'am.

Q. And A.D. was over at the apartment a lot?

A. Every now and then.

Q. Every now and then, every other day?

A. No; he wasn't over that much.

Q. He didn't go to school with her?

A. No, ma'am. He went to another school.

Q. So the only time they would see each other is when he would come over?

A. Sometimes he came over on weekends, but most of the time he just called her all the time.

Q. You had a problem with Ve'Queshia leaving school during the day, didn't you?

A. Yes, ma'am.

Q. In fact, Ve'Queshia would disappear from the school grounds—

[640] MR. JETT: Objection. This is not relevant.

THE COURT: Overruled. Go ahead.

MS. HEATH: Q. Would she not?

THE WITNESS: A. Yee, ma'am.

Q. And was that from Bryan Adams or from the Lake Highlands School?

A. It was at Bryan Adams.

Q. Is that a school she went to in December of 2002?

A. Yes, ma' am

Q. There would be times you would go by to pick her up and she wouldn't be there?

A. That happened once.

Q. And you called Ted Dixon concerned about Ve'Queshia's disappearance?

A. No, I didn't call Ted. I had told Ted about it, but I didn't call Ted.

Q. And you were concerned about the fact that she was disappearing from the school grounds?

A. Yes, ma'am.

Q. When you moved into the Forest Springs address, you moved her into a new school?

A. Yes, ma'am.

Q. She left Bryan Adams High School in December of 2002?

A. Yes, ma'am.

Q. And she moved into Lake Highlands High School?

[641] A. Yes, ma'am.

Q. In January of 2003?

A. Yes, ma'am.

Q. And as far as you know, in Lake Highlands High School she did not have an attendance problem?

A. No, ma'am, she didn't.

Q. She went to school everyday when she was supposed to go to school?

A. Yes, ma'am

Q. In fact, she was a pretty good student when she would go to school.

A. Yes, ma'am,

Q. And the other girls you didn't have an attendance problem with?

A. No, ma'am.

Q. They would go to school when they were supposed to?

A. Yes, ma'am.

Q. Now, as we get to January 4th, that Saturday of the gun show, you wake up about 2:00 in the afternoon or so.

A. Yes, ma'am.

Q. And you are told you are going to go to the gun show?

A. Yes, ma'am.

Q. You go in a car with Pacman's sister?

A. We went—I went up to the store and then got in the car with Pacman because he was seeing Hookie and Tyshon somewhere [642] else in my car.

Q. But you drove to the gun show with Farrah (phonetic) Pooler?

A. No. We was in the same car together.

Q. And Pacman went with Hookie, Cory Sanders, to the gun show in another girl's car, somebody else's car?

A. No, ma'am.

Q. And to get to the gun show it is what? About 20 minutes, a 30-minute drive?

A. I am not for sure how far it was.

Q. You arrive at the gun show?

A. Yes, ma'am.

Q. And there is two separate cars that arrive?

A. No, ma'am.

Q. So all five of you were in one car?

A. Yes, ma'am.

Q. You say Tyshon went to the gun show with you. Isn't it true that it was only you, Farrah Pooler, Pacman—

A. Tyshon and Hookie.

Q. And Hookie?

A. Yes, ma'am.

Q. Not Tyshon?

A. Yes, ma'am; Tyshon went.

Q. But all of you did not come in the same car?

A. I was in the car with Pacman, because we left my apartment.

[643] Q. Ma'am, the question was were all of you in the same car?

A. We weren't all in the same car.

Q. So there is at least another car?

A. Yes, ma'am.

Q. So at least two cars, if not more, arrive at the gun show?

A. It was two.

Q. So there are two cars that arrive at the gun show?

A. Yes, ma'am.

Q. So you arrive at the gun show and you have to pay money to go in?

A. Yes, ma'am.

Q. So everybody pays money to go in?

A. No. Hookie paid for everybody to go in.

Q. Money was paid for everybody to attend the gun show?

A. Yes, ma'am.

Q. And in the gun show there is a lot of security officers there, is there not?

A. I saw some.

Q. At no point during the gun show did you in public go to any of the security officers and explain to them that you were having a problem.

A. No, ma'am.

Q. You never went up to them and said, "This man has held a gun to my head and he is forcing me to do things."

A. No, ma'am.

[644] Q. You never went to a security person or police officer in the gun show and said, "Please send a police vehicle to my apartment to get my girls."

A. No, ma'am.

Q. At this point your girls were in the apartment by themselves.

A. No, ma'am.

Q. Do you remember Joycelyn's testimony yesterday that it was just the girls in the apartment by themselves, and I think one of them had a friend from school, but it was just the girls?

A. We are talking about January the 4th. Right?

Q. Correct. The very first—

A. His cousin Tony was there also.

Q. Do you remember Joycelyn's testimony saying—

A. Yes, I remember Joycelyn's testimony.

Q. Saying it was just the girl's there?

A. I remember her testimony.

Q. Now, the first gun you buy, you go up to the booth and you are telling the jury that you did fill out the application?

A. Yes, ma'am.

Q. And if we could put No. 20-A up on the screen, the first page. And that is your signature on it?

A. Yes, ma'am.

Q. So you are not denying that that is your signature?

A. No, ma'am.

[645] Q. No. 20-A is shown on the screen, is that your signature?

A. Yes, ma'am.

Q. And if we could go to the top. That is your name and your handwriting. You filled all that out?

A. Yes, ma'am.

Q. Were you living on Skillman Avenue at the time?

A. No, ma'am.

Q. So is that a lie where your residence is?

A. Yeah. T wasn't living there at the time I filled out the form.

Q. So was that a lie?

A. Yes.

Q. You were not living on Skillman?

A. No, I wasn't.

Q. If we can scroll down to the questions. In case you cannot read the screen, let me show you Government's Exhibit No. 20-A, and ask you, the very first question, would you read that to the jury, please?

A. "Are you the actual buyer of the firearms listed on this form?"

Q. And were you the actual buyer of the firearms listed on that form?

A. No.

Q. Was that gun supposed to be for you?

A. No, ma'am.

[646] Q. Did you lie on that form by putting "yes"?

A. Yes, ma'am.

Q. What was the next question?

A. "Are you under indictment or information in any court for a felony, or any other crime for which the judge could imprison you for more than one year?"

Q. And were you under indictment at that time?

A. Yes, I was.

Q. Did you know you were under indictment at the time?

A. Yes, ma'am.

Q. When you put "no" down there, was it a lie?

A. Yes, ma'am.

Q. So on each of these forms when you were buying guns, did you answer the questions the same way that yes, you were buying the guns for yourself?

A. Yes, ma'am; I answered that way.

Q. And you understood that the gun dealer wanted you to answer the questions truthfully.

A. Yes, ma'am.

Q. In fact, you swore at the bottom on your signature that you would answer those questions truthfully?

A. Yes, ma'am.

Q. Did you know that it was a crime for you to buy that gun for you to receive that gun?

A. Yes, ma'am.

[647] Q. There is no question in your mind that you knew that you were committing a crime by buying that gun?

A. I knew I was.

Q. And for each gun after that, did you know that you were committing a crime by buying that gun?

A. Yes, ma'am.

Q. Now, in preparation for trial, you have had an opportunity to talk to Doctor Coons. Is that correct?

A. Yes, ma'am.

Q. And do you recall telling him the story that you just told the grand jury earlier about—

MR. JETT: Excuse me, Judge, in reference to a grand

MS. HEATH: Q. To the jury here. Do you recall telling him the same story you just told the jury here about going to the first gun dealer and saying, "I am under indictment. I am in the court system"?

A. I did tell the first gun dealer that I was—I didn't say I was under indictment, but I did say I was in the court system. And he asked me had I been sentenced yet, and I said no. And he said he was going to run it through and see what happened.

Q. So he didn't come back to this form and say, "But excuse me, Ms. Ashford. You answered on this form that you are not under indictment. Are you really under indictment?"

[648] A. He didn't say that. He didn't say that.

Q. He just gave you a wink and said, "Let's run it through and see if you, a person under indictment, can get this gun"?

A. He asked me had I been sentenced yet, and I told him no, and he said he was going to run it through and see what it comes up as.

Q. And when it ran through and you got the gun, you were surprised?

A. Yes, I was.

Q. Do you recall telling Doctor Coons, "In my mind I hadn't done anything wrong then"?

A. Because it made me feel like I hadn't done it wrong when I knew I wasn't supposed to be getting any guns. I knew I wasn't supposed to be able to get them.

Q. But do you recall telling Doctor Coons that in your mind, which is what the jury needs to hear about what you were thinking, in your mind you had not done anything wrong by buying that firearm.

A. I knew I had did something wrong. I knew I wasn't supposed to have been able to do it. I didn't want to do it.

Q. So you knew you had done something wrong?

A. Yes, ma'am.

Q. So when you talk to Doctor Coons—Excuse me. Let me finish the question. When you talked to Doctor Coons, you lied to him when you told him, "In my mind I hadn't done anything [649] wrong"?

A. I said I didn't feel like I had done anything wrong because it came back approved.

Q. After that you gave the—you finished the transaction and gave the money to the dealer?

A. Yes, ma'am.

Q. And you got the gun?

A. Yes, ma'am.

Q. And then you walk around and look at some more guns?

A. Yes, ma'am.

Q. And everybody with you, they are looking at guns also?

A. Yes, ma'am.

Q. And you go to a second dealer and that is where you buy the Intratec gun with the laser?

A. Yes, ma'am.

Q. The laser pointer we have heard so much about?

A. Yes, ma'am.

Q. And that was later in that afternoon?

A. Yes, ma'am.

Q. Do you recall approximately how long you spent at the gun show that day?

A. I don't know—No, ma'am.

Q. Did it seem like a couple of hours?

A. It could have been; yes.

Q. Was there a lot of wandering around and looking at [650] different places?

A. Yes, ma'am.

Q. And they are picking up guns and looking at them?

A. Yes, ma'am.

Q. You are picking up guns and looking at them?

A. I didn't pick up any guns. I wasn't interested in gun.

Q. The guns you bought you picked up?

A. Yeah, cause—Yes, ma'am. Yes.

Q. At the conclusion of the gun show after you have been there for a couple of hours, all of you decide to leave.

A. Yes, ma'am.

Q. The first show they checked your bags; they check your bags as you are leaving also?

A. At the first show they wasn't doing that. They was handing the little locks for the guns. As you are walking out the door they just made sure you had a receipt in your hand as you was walking out with it.

Q. So those little locks we saw earlier introduced into evidence were things you got at the first gun show?

A. Yes, ma'am.

Q. Now, driving home you and Farrah Pooler go in one car.

A. No. We split up. When we got I think it is like west Dallas, they was going somewhere else, and they pulled up to a McDonald's. And it wasn't too far from Lew. Sterrett they pulled up to McDonald's, and they said they was going to follow [651] us up. And I got up in my car and Farrah got in my car with me and we went to my apartment.

Q. Did you drop Farrah off at home?

A. No. she was there.

Q. When you got to your apartment you had Farrah with you?

A. Yes, ma'am.

Q. And your girls were at home?

A. Yes, ma'am.

Q. Nobody else was with them at that time?

A. I don't remember which one, who asked, whether it was Tony that said he had just walked up to the store, he had walked to the corner store.

Q. Do you remember Joycelyn's testimony yesterday that when you arrived home you arrived home alone, and that it was just the girls at home?

A. I remember something like that.

Q. Do you remember Joycelyn saying that later that evening everybody else came over, Farrah came over, Farrah Pooler came over, Pacman came over? Do you remember her testimony yesterday?

A. I remember her saying it, but I think she got confused on the times and places.

Q. Saturday night everybody comes over to the house—Pacman, Farrah Pooler?

A. We was all there.

[652] Q. When you say "we," who are "we"?

A. It was me, the kids, Pacman, Farrah, Hookie, Tyshon, Tony, T.K. came by and left. I think that is it.

Q. You heard some of the names I had asked both Joycelyn and Ve'Queshia about yesterday. Is that a yes?

A. Yes, ma'am.

Q. Pacman was in his early 20s. Isn't that correct?

A. Yes, ma'am.

Q. In fact, when you met him he was 20.

A. He had lied to me about his age when I first met him.

Q. The question was he was 20 when you first met him.

A. Yes, ma'am.

Q. Because you found out that he turned 21?

A. Yes, ma'am.

Q. In fact, he turned 21 in February?

A. Yes, ma'am.

Q. Tyshon is in his early 20s as well?

A. Yes, ma'am.

Q. Cory Sanders is in his early 20s—Hookie?

A. Yes, ma'am.

Q. T.K. is a little older; maybe in his late 20s?

A. I never knew T.K.'s age.

Q. Another person that came by the house was E.

A. Yes, ma'am.
Q. E was also young, in his 20s?
[653] A. He was somewhere around there; yes.
Q. Little Half would have come by.
A. Yes, ma'am.
Q. And he also was in his 20s?
A. I didn't know Half's age.
Q. You said A.D. was 17?
A. Yes, ma'am.
Q. Do you know A.D.'s full name?
A. No, ma'am.
Q. Do you know A.D.'s first name?
A. All I ever knew him as was just A.D.
Q. A.D.?
A. Yes, ma'am.
Q. What is A.D.'s parents' names?
A. I don't know his parents, name.
Q. Where does A.D. live?
A. Off of—It was off of 635 and Kingsley.
Q. Capone would come by the apartment?
A. Yes, ma'am.
Q. And Capone was also in his 20s?
A. I didn't know his age.
Q. Was he young like the rest of them?
A. He seemed older than them.
Q. Casper would come by.
A. Yes, ma'am.
[654] Q. And T.K.
A. Yes, ma'am.
Q. Do you know T.K.'s full name?
A. No, ma'am.
Q. Do you know his real first name?
A. I know him as T.K.
Q. Was other people also coming by your apartment that you did not know their names, other friends of Pacman or friends of these individuals?

A. Yes, ma'am.

Q. You mentioned during the time that Pacman was with you that he was not employed?

A. No, ma'am.

Q. So August, September, October, November, December, January, he had no job?

A. No, ma'am.

Q. He was making money, though, in some fashion?

A. When I first met him he told me he had a job, but I found out later that he didn't.

Q. But he was still making money. He would bring money home?

A. Yeah, he would have money.

Q. And he and his friends would have money?

A. Yes, ma'am.

Q. And they would have some money that was not your money?

A. Yes, ma'am.

[655] Q. On occasion he would get your money?

A. Yes, ma'am.

Q. But he had other money, so he wasn't just living off your money.

A. Practically every time that Pacman came I gave Pacman money.

Q. That wasn't the question. Pacman had his own money, so he wasn't just living off your money?

A. Sometimes.

Q. Would you be surprised to know that the value of the guns that were purchased at the two gun shows was about $1500?

MR. JETT: Objection. It is not in evidence, and she is making a statement rather than asking a question.

THE COURT: The relevance of that is?

MS. HEATH: We are just talking about money. She talked about the financial problems she had had earlier, so I was showing one of the expenses that they had.

THE COURT: All right. Go ahead.

MS. HEATH: Q. Would you be surprised to find out that the value of the guns over the two gun shows was about $1500?

MR. JETT: Excuse me. The form of the question is my objection. She is making a statement. She is not asking a question.

THE COURT: She is asking a question—"are you [656] surprised?"

MR. JETT: It is assuming facts not in evidence.

THE COURT: Overrule the objection, counsel. Go ahead.

THE WITNESS: A. I didn't know that.

MS. HEATH: Q. And as of the time you were fired from Stone way, the daycare center, you had no regular income coming in from a job.

A. No, ma'am.

Q. You had child support coming in from Ted Dixon.

A. Yes, ma'am; and Harold Humphrey.

Q. And that is Ve'Queshia's father?

A. Yes, ma'am.

Q. You still had to pay rent to the apartment complex, did you not?

A. Yes, ma'am.

Q. In fact, you had some problems with getting repairs done at that apartment complex.

A. Yes, ma'am.

Q. And you would have to go over to the manager's office to kind of make sure that they would get done?

A. I called the manager's office.

Q. And you would also go to the manager's office?

A. No. I talked to the lady on the phone.

Q. So you never went over to the office?

[657] A. I went to the office one time and it was about my rent.

Q. Did you have a discussion with the manager about whether or not you were going to be able to stay in the apartment?

A. Yes, ma'am.

Q. Okay. At some time did the apartment complex at Forest springs indicate that you needed to move out?

A. Yes, ma'am.

Q. Because there was too much traffic in your house; too many people coming and going?

MR. JETT: Objection. It is hearsay. She wouldn't know why. It is speculation.

THE COURT: Well, overruled. She may answer. If she knows she can answer.

MR. JETT: And it would be based on hearsay, Your Honor.

THE COURT: Overrule the objection.

THE WITNESS: A. She didn't tell me that. That is not what she told me.

MS. HEATH: Q. Did she tell you it was because of the shot through your window in your apartment?

A. Yea, ma'am.

Q. And that was a shot coming out of your apartment?

A. Yes, ma'am.

Q. And that was the back door, the sliding glass door?

A. It is the sliding glass door. It is in the front of the [658] apartment.

Q. And this was in January 2003 when all this was happening?

A. Yes, ma'am.

Q. Pacman wasn't the only one prior to the gun shows that had a gun around the apartment.

A. No, ma'am.

Q. You saw some other people that had guns on occasion.

A. Yeah.

MR. JETT: What time frame is she talking about?

MS. HEATH: Q. In January 2003 just prior to the gun shows.

THE WITNESS: A. Yeah. They had guns. Me and Tyshon pulled up one day from the store, and they was out there into it, and they had guns. And the guys they was into it with had gun.

Q. Is there pointing of guns going on?

A. They had guns in their hands, and some of them had guns, like they have them like stuck there. They had them there.

Q. Stuck there, stuck in tic waistband of the pants in the front?

A. Yes, ma'am.

Q. And Pacman also had a shotgun that he had at the apartment for a while in January 2003.

A. No. I found it there before that.

Q. Okay. The shotgun shells that were shown to the jury [659] earlier, that came from Pacman's shotgun?

A. Yes, ma'am.

Q. So the shotgun you knew about prior to the gun shows?

A. Yeah. I had found it.

Q. And you knew about Pacman carrying a gun prior to the gun shows, because he put it to your head?

A. Yes, ma'am.

Q. And you knew that other people like Tyshon carried a gun on occasion, because you saw them getting into it?

A. Yeah. That was in January; yeah.

Q. And you know as a mother that that .s not a good surrounding to have your kids in.

A. Yes, ma'am.

Q. You knew from your relationship with Ted Dixon you didn't want them in a relationship where you are being abused?

A. Yes, ma'am.

Q. And you didn't want them in a relationship where they are being abused?

A. Yes, ma'am.

Q. And you didn't want them in a relationship or around people that had guns?

A. Yes, ma'am; I didn't.

Q. Or around young juvenile males that didn't work?

A. Yes, ma'am.

Q. That just hung out all day?

[660] A. Yes, ma'am.

Q. And you knew some of these people had problems with the police?

A. I heard them talking about it.

Q. And that is not a good environment to have your girls in?

A. No, ma'am.

Q. So prior to the gun shows, you never called your mom to say, "Mom, we need help. We need to get out of this situation"?

A. No, ma'am.

Q. You never called your stepfather to say, "Dad, we need to get out of this situations"?

A. No, ma'am.

Q. Never called your real father saying you need to get out of the situation?

A. No, ma'am.

Q. You never called Ted Dixon and said, "Ted, I am having problems again in my relationship. I need help. I need to get out."

A. No, ma'am.

Q. You never packed the girls up in the car and took off?

A. No, ma'am.

Q. Even when your girls at Christmas time were over with your mom and your stepfather in Greenville, you never said, "Could you keep them there for a while so they will be safe? I am [661] having some problems. Let me resolve it without them here." You never told your parents that, did you?

A. I didn't tell my mom exactly the way you put it. I had told my mother once that when we was talking about me doing time, I had told my mother once that I may just send the girls on down there before time. And she asked me what was going on, and I told her I couldn't talk about it.

Q. So you had an occasion when it was brought up, but you wouldn't talk about it?

A. I was afraid to.

Q. And over the Christmas holidays when your parents had the girls safe and sound, you didn't decide then to tell them, "Please keep the girls. Do not send them back"?

A. No, ma'am.

Q. Looking back on it, don't you think that would have been the best thing to do?

A. I realize that now.

Q. Would you agree that you were negligent for letting them come back into the situation?

A. Yes, ma'am.

Q. Would you agree that you were negligent for allowing Pacman back into your life, knowing that he was abusive prior to that?

A. Yes, ma'am.

Q. Do you agree that you were negligent for not calling the [662] police on him?

A. Yes, ma'am.

Q. Do you see that you had options?

A. But I was afraid, Ms. Heath. I didn't know what to do.

Q. But did you see that you had options?

A. Yes.

Q. And did you see for a period of time your daughters were sate with their grandparents?

A. Yes.

Q. In fact, after the second qun show, which we will talk about in a minute, but after the second gun show, you do call the police.

A. I didn't call—I wasn't the one that called the police.

Q. You had an argument with—Was it T.K.?

A. It was T.K., and Queshia was on the phone with Farrah, and she had Farrah, Farrah gave her the address—Queshia gave Farrah the address and Farrah sent the police over there.

Q. So Farrah on your behalf called the police because there was a problem at your apartment?

A. She didn't like T.K. because her and T.K. had got into it before.

Q. So because we don't like T.K., we decide to call the police on him?

A. Yes, ma'am.

Q. The police come out. Is that correct?

[663] A. Yes, ma'am.

Q. Pacman is not there that day, is he, or not at that time?

A. He wasn't there at the time me and T.K. got into it.

Q. So Pacman was gone at this point?

A. Yes.

Q. And this is after the second gun show. Hs is out and about.

A. I am not for sure if it was the second gun show or before, but I remember the incident.

Q. So the police arrive?

A. Yes.

Q. And when people know in the apartment that the police are coming, some of them leave, like A.D.

A. A.D. did; yea. A.D. did.

Q. He took off?

A. Yeah.

Q. He took his nine millimeter gun with him?

A. I don't know what happened about that.

Q. You remember talk about that in the apartment afterwards, that he threw his gun away and that the other guys wanted to go find it.

MR. JETT: Excuse me, Judge. Now she is asking about hearsay. We object.

THE COURT: Sustained,

MS. HEATH: Q. So the police come to the apartment?

[664] THE WITNESS: A. Yes, ma'am.

Q. They talk to you?

A. Yes, ma'am.

Q. Who else did they talk to in the apartment?

A. They talked to Half.

Q. Little Half?

A. Yeah. And—

Q. Did T. K. stay around?

A. T.K. was gone way before that.

Q. So he took off?

A. Yeah.

Q. Here you have the police at your apartment. Do you say, "Thank God you are here. I am having problems with this man Pacman, and he is holding guns to my head and making me buy other guns"?

A. No, ma'am. They already told me what to say when they saw the cops out there.

Q. Did you see—Not just one police officer arrived. Is that correct? There were several?

A. There was only one that came in. Just one came in.

Q. But there were more outside?

A. I didn't ever look out there.

Q. And the policeman, when he came in he had a gun?

A. Yes, he did.

Q. And you didn't say, "They have been beating me. Look at [665] the bruises on my arms and my shoulders and my back."

A. No, I didn't.

Q. You didn't say, "They have been pointing lasers at my head and threatening to shoot me"?

A. No, I didn't.

Q. You didn't say, "They have been trying to kill me"?

A. No, I didn't,

Q. Do you see that you had an opportunity then to make a report?

A. I see that now.

Q. You had a phone in your apartment, did you not?

A. Yes, ma'am.

Q. That phone was paid for? It was working?

A. Yeah.

Q. It was never a period of time in December or January when it was out of service?

A. No, it wasn't.

Q. You could have picked up the phone at any point, could you not?

A. Every time I used the phone somebody would pick a phone up in the back room, or it somebody called for me they asked them who is it, what they want. I hardly ever got phone calls.

Q. The question was you could have picked the phone up, could you not?

A. Yeah, but they would have heard me on the phone.

[666] Q. Okay. Whether they heard you or saw you, could you have picked the phone up and dialed 9-1-1?

A. I was afraid. I wasn't thinking like that.

Q. During the week between the two gun shows from Saturday to Saturday, your girls are in school.

A. Yeah.

Q. Monday. Yes?

A. Yes.

Q. They are in school Tuesday?

A. Yes.

Q. They are in school Wednesday?

A. Yes.

Q. They are in school Thursday?

A. Yes.

Q. They are in school Friday?

A. Yes.

Q. Did you pick up the phone any of those days and call the police and say, "Please send a police car to the different schools my girls go to and make sure they are safe. I am having a problem with a man pointing a gun at me"?

A. I didn't think like that.

Q. Do you see that you had an option to do that?

A. Yes.

Q. That your girls were safe at school at that point?

A. I see that now.

[667] Q. Were you negligent for not calling the police each and every one of those days?

A. Yes.

Q. You mentioned in January that you were also going to church, but you would have Rookie come with you?

A. Yeah, he would come with me.

Q. So the Sunday after the gun show you would go to church, but Hookie was there with you?

A. Yes.

Q. So after the first gun show you go to church with Hookie?

A. Yes.

Q. Okay. So that Sunday you are in church, and I assume you and your girls and Hookie are not the only people in church.

A. No, we are not.

Q. It is a full church?

A. Yes.

Q. After the holidays everybody likes to go to church a little more. It is usually more crowded.

A. Yes.

Q, So you have a lot of people in church?

A. Yes.

Q. And what church do you go to?

A. Full Gospel.

Q. You have a minister or a priest?

A. A minister, a preacher,

[668] Q. A preacher? While you are in church do you tell anybody, "We are having problems at home. Please help me and my girls"?

A. No, I didn't.

Q. Rookie didn't take a gun into church with him.

A. Not that I know of.

Q. You have all of these people around you in church on Sunday, and you do not try to protect your girls.

A. T was trying to protect my girls. I was trying my best to keep anything from happening to us.

Q. Did you tell anybody in church, any one of those people sitting around you in church?

A. No., I didn't.

Q. So were you doing the best you could to protect your girls?

A. I thought I was.

Q. Were you doing the best you could by not telling people, by not reporting it?

A. No.

Q. Did you put them at risk because you would not tell anybody else?

A. Yes.

Q. Now, at both these gun shows, each time that you fill out a form you are telling the jury you knew you were committing a crime?

A. Yes, ma'am.

Q. But you know that at the gun show Pacman is not going to [669] shoot you. You know that?

A. I didn't know what his mind was. All I know is what he told me.

Q. But you told the jury earlier—

A. I didn't feel like he would shoot me in front of a lot of people, but I still didn't know where his mind was.

Q. You told the jury you knew he wasn't going to kill you right then; it would be later that he would, abuse you.

A. Yes, I said that.

Q. So you knew nothing was going to happen immediately.

A. No, I didn't—No, I didn't think it was going to happen right then and there.

Q. each time you filled out the information on the form, you knew from the way the form was worded that you would not be able to get a gun if you indicated you were under indictment. You knew that.

A. Actually I had never seen a form until that first gun show.

Q. And when you answered the first question, doesn't it say on that first question in bold type—And if we could put No. 20-A back on the screen.

MR. JETT: Judge, this has been asked and answered. She already said she knew what was on the form and she knew it wasn't true what she said.

THE COURT: All right. Overruled. Go ahead. She may ask.

[670] MS. HEATH: Q. And if we could focus on the very first question. The second question; I am sorry. I am sorry;

the first question. Do you see the warning there? And if you have the original form in front of you, it says, "You are not the actual buyer if you are acquiring the firearm on behalf of another person." Do you see that?

THE WITNESS: A. Yes.

Q. Do you see it also says, "If you are not the actual buyer, the dealer cannot transfer the firearm to you." Do you see that?

A. Yes.

Q. If you are not the actual buyer he can't give you that gun. Do you see that?

A. Yes.

Q. Did you tell the jury earlier you didn't want to buy guns?

A. No, I didn't want guns.

Q. If you had answered "no" here, you couldn't have gotten a gun. Do you see that?

A. Yes, ma'am.

Q. You could have avoided getting the gun and committing a crime by putting "no" there,

A. I was told to put "yes." I was told to put "yes." That is why I put "yes" there.

Q. Did you write "help me" on the form?

A. No.

[671] Q. "I am being threatened"?

A. No.

Q. Did you try to tell any of the gun dealers that you were being threatened to buy these guns?

A. No, I didn't.

Q. Did you ask any of the gun dealers, "Hey, can I borrow your cell phone for a minute so I can make a call?"

A. No.

Q. Did you attempt to go to use a phone there while you were there?

A. No.

Q. You mentioned that during the first gun show there was a period of time when—No, during the second gun show where Pacman went off with the Hispanic men, or one of the men?

A. They stepped up as if they didn't want us to hear what they was talking about, and me and A.D. and the other Hispanic guy wasn't too far behind them. They just walked up a little piece, and they was whispering and talking.

Q. You mentioned at the second gun show that the very first gun you bought was for A.D. This was the Mesquite—

A. Yeah. Because I heard him say that is the one he want, so I knew that. That is why I said that.

Q. Prior to that day had you seen A.D. with a gun?

A. No.

Q. So you go ahead and buy the gun that A.D. wants.

[672] A. Yeah.

Q. You fill out the form?

A. Yes.

Q. Had you met the Mexican people by then, the Hispanic people by then?

A. No.

Q. So it wasn't until you left that table that you saw the Hispanic people?

A. Yes. That is the first time I ever saw them.

Q. And then you buy guns for them after that. Is that correct?

A. I didn't know I was buying guns—I didn't know I was buying guns for them until after the fact. It is when I realized when I saw Pacman give them the box.

Q. How many guns did you buy that ended up in their hands?

A. Two.

Q. And where did you buy those guns—at two separate dealers?

A. Yes, ma'am.

Q. And were those separate transactions from that first one, from A.D.'s gun?

A. Yeah. One of those went to them from A.D.'s gun; yes. The same dealer where A.D.'s gun came from, one of those guns came from there.

Q. So when you bought A.D.'s gun you had two guns.

A. We went back, and I was going to fill out another form [673] and the guy told me I didn't have to; he put it on the same form.

Q. So you got two guns from the same dealer?

A. Yes, ma'am.

Q. And you found out later that that gun went to the Mexican people that were there?

A. Yes, ma'am.

Q. And there were two gentlemen that was there?

A. There was two Hispanics there.

Q. And there are two people Pacruan seemed to know?

A. Yes, ma'am.

Q. Now, the second gun show you arrived there after lunch sometime early afternoon?

A. I don't know what time it was we got there.

Q. It wasn't the morning?

A. No, it wasn't morning.

Q. And you stay at this gun show tor a couple of hours also?

A. Something like that; yes.

Q. Are you wandering around looking at other guns when you are not buying a gun?

A. Yes, ma'am.

THE COURT: Ms. Heath, you have covered when she was at the gun show before.

MS. HEATH: This was the second gun show. We haven't talked about that.

[674] THE COURT: You are not now—You haven't asked her about the second gun show before?

MS. HEATH: No. I talked about the first gun show before.

THE COURT: My mistake. I thought you asked her about it.

MS. HEATH: Q. And at the second gun show, you are able to buy three Guns—I am sorry; four guns. But you are denied on one?

THE WITNESS: A. Yeah. It was four.

Q. And the dealer that denies you or delays the purchase of that gun, you had an argument with him?

A. I wasn't really arguing with him.
Q. You were irritated that you could not get that gun?
A. I wasn't irritated.

THE COURT: You have asked about this, Ms. Heath. You talked about that on that social security issue. Have you not asked her about the social security issue before?

MS. HEATH: I have not, Your Honor.

THE COURT: All right.

MS. HEATH: Q. You were irritated with this particular gun dealer because he did not give you a firearm?

THE WITNESS: A. No, that is not why I was irritated.

Q. And you told him you just bought a firearm from somebody [675] else?

A. That is what Pacman told me to tell him.
Q. My question to you was you told the gun dealer that you had just bought a gun from another dealer?
A. Yes, I did tell him that, but I wasn't irritated because he wasn't selling it to me.
Q. And you came back to him with the number?
A. Because he told me to go get it from the other dealer, and I went over and got it.

Q. The question isn't what Pacman told you. You came back to that dealer with a number?

A. Yes, I did.

Q. And that still did not get you the gun?

A. No, ma'am.

Q. And you were irritated at this point because you could not get the money back.

A. After a while I went over there to get the number, and I was talking to the other dealer that had sold the gun and he was getting the forms so he could get the number off the form. And Pacman told me that if he lose his money I had a price to pay.

Q. Again, my question to you is what you told the gun dealer. You were upset with the gun dealer. You told him, you know, "You are keeping my money. That is not right."

A. Yeah. He told me to tell him that.

[676] Q. Again that wasn't my question. Did you tell the gun dealer—

MR. JETT: Excuse me, Judge. She answered the question. She said she told the gun dealer that because that is what Pacman told her to say. She answered the question.

THE COURT: It was unresponsive, but go ahead and ask your question.

MS. HEATH: Q. Did you tell the gun dealer, "You are keeping my money and that is not fair"?

A. Yes.

Q. "That is not right"?

A. Yes.

Q. And did he explain to you that there is a sign up and that is the policy?

A. I didn't say he was keeping my money. F told him, I asked him why was they keeping money, and he explained it to me,

Q. So you asked him why he was keeping the money?

A. Yes. I didn't say he was keeping my money. I didn't say that.

Q. You indicated that during the week between the gun shows the abuse got worse?

A. Yes, ma'am.

Q. And the girls were aware of some of the abuse, whether they heard it or they saw it?

A. Yes, ma'am.

[677] Q. And at no point did you try to get your girls to help you by going to school and telling anybody at school?

A. No, ma'am, I didn't.

Q. And you didn't tell any of the girls, "When you get to school, call grandma and tell her to come get you from school"?

A. No, ma'am, I didn't.

MR. JETT: This has really been asked and answered. She has gone over it time and time again. She didn't call people. It is repetitive. We object.

THE COURT: Well, I think she is asking about a specific time frame here. Go ahead.

MS. HEATH: Q. And each day your girls went to school you didn't tell them, "Call your grandfathers, one of them"?

THE WITNESS: A. No, ma'am.

Q. And tell them to come pick you up?

MR. JETT: Can we hear about: what time frame, because before she went "Monday, Tuesday, Wednesday," so we—

THE COURT: She is asking about that week.

MS. HEATH: The week between the gun shows.

THE COURT: That is what she is asking about.

MS. HEATH: Q. And you didn't tell your girls to report it to any teachers or counselors or the security people at their school?

THE WITNESS: A. No, ma'am.

[678] Q. Now, when you registered Ve'Queshia at Bryan Adams in August of 2002, do you recall putting on the form that Pacman was going to be the emergency contact?

A. I don't think that is why his name got put on there.

Q. Okay. Let me show you an application, the first page. That appears to bear your signature. Do you see that?

A. Yes.

Q. And it has some handwriting up here with some personal information about you—your name, social security number. Do you see that?

A. Yes.

Q. That is your handwriting, isn't it?

A. Yes, it is.

Q. And do you see "In case of emergency contact"? Do you see that?

A. Yes.

Q. Do you see the name Thomas Wright, and in parentheses Pacman?

A. Yes. I did that.

Q. With a phone number for emergency contact?

A. Yes.

Q. And you mentioned earlier that you didn't know anything about Peavy Road, Do you recall that?

A. Yeah.

Q. Do you see your address on this form as living on Peavy [679] Road?

A. That is a girlfriend of mine's address.

Q. So when you told the jury earlier you didn't know anything about an address on Peavy Road, that is not true?

A. I didn't remember it then.Q

Q. Was that a lie that you were living on Peavy Road at that time in September of 2002?

A. That is when I was in the process of moving, and I let Queshia and them stay in the same school until I got settled.

Q. So you just used this address to help keep them in school?

A. Yes.

Q. So that is a lie. You were not living at that address.

A. No.

Q. And do you recall going up to the school to sign the papers to have her transferred in December of 2002?

A. Yes, I did.

Q. So you would have to go up to the school to sign the paperwork and have her transferred to Lake Highlands?

A. Yes, ma'am.

Q. And do you recall going to Lake Highlands school to have her enrolled there and filling out the forms?

A. Yes, ma'am.

Q. And do you recall at that school also putting down that you had emergency contact of Thomas Wright, Pacman?

A. I think the papers just transferred.

[680] Q. Now, in February you were arrested for the guns.

A. Yes, ma'am.

Q. And you were told you were arrested for the guns, for purchasing these guns?

A. Yes, ma'am.

Q. And you told the officers you had three guns at the location?

A. I told them that there was three guns. T said there were three guns there.

Q. And this was in the morning on February 3rd, 2003?

A. Yes, ma'am.

Q. And it wasn't until that afternoon that you actually had your hearing before the Judge?

A. Yes, ma'am.

Q. And you had some family members that came up during that day. Isn't that correct?

A. They showed up right before court.

Q. And who came for court?

A. My mother, I think my uncle was with her, and Queshia was with me.

Q. And you now know from this trial that no guns were found at your apartment.

A. Yes, ma'am.

Q. On February 3rd, 2003 you went to jail. You haven't been out since?

[681] A. No, ma'am, I haven't.

Q. You are now separated from Pacman?

A. Yes, ma'am.

Q. He is out of your life?

A. Yes, ma'am.

Q. Did that arrest help to get him out of your life?

A. Yes, ma'am.

Q. Did you attempt to make any contact with him after that?

A. Yes, I did.

Q. And why was that?

A. I called and told him that I won; that I ain't got to worry about him messing with me anymore. I had my sister call and I told him that.

Q. So you called him right after you got in jail and said you had won?

A. Yes, I told him that.

Q. Because you knew your mom had the kids now and you you were safe?

A. Yes, I did.

Q. So you never wanted to see him again?

A. No, ma'am.

Q. Didn't want him in your life anymore?

A. No, ma'am, I didn't.

Q. Then why did you put him down on your visitation list in the jail? Why is Thomas Wright on your visitation list?

[682] A. I don't remember putting him on my visitation list.

Q. You wanted him to come visit you, didn't you? Ms. Dixon, let me show you another document bearing your signature. Is that your signature?

A. It is my signature.

Q. Is that your handwriting?

A. Yes, it is my handwriting.

Q. You have eight people that you can identify to come visit you. Do you see that?

A. Yes.

Q. Do you see that you have your mom on there?

A. Yes.

Q. Your stepfather?

A. Yes.

Q. Your three daughters?

A. Yes.

Q. And the very next name is whose name?

A. Thomas Wright.

Q. Thomas Wright. And this is February 3rd, isn't it, while you are in jail? Isn't that correct?

A. Yes.

Q. And there were two more family members. Is that sisters?

A. They are sisters.

Q. So of the eight people listed to come visit you in jail, all family except Pacman. He is not out of your life, was he?

[683] A. He was out of my life.

Q. He was on your visitation list.

A. He never came up here.

Q. But you put him on your list.

A. I did put that, yeah. I didn't remember doing that, though.

Q. And this visitation list gives these people permission to come visit you.

A. I changed my visitation right after I did that.

Q. In March.

A. I changed it before that. I changed it before that and they said we have—

THE COURT: Ms. Dixon, hold on.

MR. JETT: If we are going to talk about a document not in evidence, I would like to see it.

THE COURT: All right. Go ahead and ask your question.

MR. JETT: That is fine. I understand now.

MS. HEATH: Q. The next visitation list you filled out was the end of March. Isn't that correct?

THE WITNESS: A. I filled one out before that, but they sent it back to me and told me, "You have to change it every 30 days." She said that they don't accept it every 30 days.

Q. And on the next visitation list you put Ted Dixon on it.

[684] A. Because they called there to verify if I would see him because he had came up there with Divinity and I didn't have his name on there. So they told me I had to put it on there.

Q. Ms. Dixon, you have teared up with this jury about talking about the abuse.

A. Yes, ma'am.

Q. And you teared up when you have been talking about the abuse that your children had.

A. Yes, ma'am.

Q. And this is all at the hands of Pacman?

A. Yes, ma'am.

Q. And you are talking about Pacman holding guns to your head?

A. Yes, ma'am.

Q. And on a separate occasion putting a laser dot to your head?

A. Yes, ma'am.

Q. And having shotguns around the house?

A. Yes, ma'am.

Q. And you are in fear of your life from him?

A. Yes, ma'am.

Q. In fear he is going to kill you any day?

A. Yes, ma'am.

Q. Fear he is going to kill your children?

A. Yes, ma'am.

Q. But you put his name on your visitation list. You gave [685] him permission to come visit you, didn't you?

A. I did put it on there and tried to change it, but they said I couldn't change it so I had to leave it as it was for 20 days and then change it.

Q. Nobody held a gun to your head to put his name on the list, did they?

A. No, ma'am; nobody did.

Q. Nobody told you that they would kill you if you didn't put his name on that list, did they?

A. No, ma'am.

Q. Nobody told you that they would kill your children if you didn't put his name on the list?

A. No, ma'am.

Q. You weren't under any duress or stress or coercion or threats to put his name on your list?

A. No, ma'am.

Q. You of your own free will put his name on your list to give him permission to come visit you.

A. I did put his name there.

MS. HEATH: Your Honor, pass the witness.

THE COURT: Let's go ahead and break here for lunch. I have some court hearings at 1:30, so I will be actually tied up until about 2:00. I am going to give you a little longer lunch than usual. So take your lunch break and be back at 2:00. Please recall the instructions that we went over

* * * *

[687] MS. HEATH: Your Honor, the Government's position is that the Defense has not established facts sufficient for this Court to give an instruction to the jury of duress; that the elements—That none of the elements have been met that she is not under an unlawful and present imminent and impending threat of a nature as to induce a well-grounded apprehension of death or serious bodily injury, land that she had not recklessly or [688] negligently placed herself in that situation, that she had no legal reasonable alternative to violate any law, and that a direct casual relationship was reasonably anticipated between the criminal action taken and the avoidance of the harm that she wouldn't be able to avoid the threat and harm.

These are things the Defense needs to prove to the Court to be able to satisfy the Court that a duress instruction is even needed to the jury. That is a separate issue from the issue of whether or not an expert can even come in and testify.

The reason we would have the expert come in and testify pursuant to Rule 702 is that if it will assist the trier of fact to understand the evidence or determine the fact in issue. So in order for an expert to be able to testify, there needs to first be evidence before the jury that that expert will talk about that is relevant to the case or that there is a fact in issue that is relevant to the case. And at this point there has been no showing by the defense that Doctor Myers' testimony can assist the jury to understand the facts anymore than any other layperson can understand the facts that have already been presented to them in light of the fact that a duress instruction may not even be given to them. If there is no duress instruction there is no need to have an expert even come in to explain it. That would be the first hurdle that believe the defense has to overcome is to convince you that [689] they are entitled to a duress instruction, and then to convince you that this jury panel over here needs the assistance of an expert to even understand the facts that they have heard which are not complicated facts.

Even if they are entitled to a duress defense, which I do not believe that they have approached it in any one of the four elements even if they are entitled to a duress instruction, an expert's testimony still needs to be relevant to the evidence and to the issues. And in this case it is clear from case law that the determination of whether or not duress occurs is an objective standard, and there has been no showing by the defense that Doctor Myers' testimony concerning the abuse that Ms. Dixon has suffered and how it affects her judgment over the years is objective. It sounds like it is subjective. And case law has supported the fact that battered women's syndrome is not an objective defense and battered women's syndrome is not sufficient to prove a duress defense.

So on those grounds we do not feel we even get to the point of needing expert testimony in this case from either the defense or the Government.

* * * *

[696] MS. HEATH: Only, Judge, that we get back to looking at what the Fifth Circuit instructions are for duress in this case, and that would be the focus of what the expert would need to assist the jury on is their understanding of how the facts in this case that have been presented can be understood to apply to the duress instruction as it is provided by the Fifth Circuit.

There is a conflict with the fact that the Fifth Circuit requires that it be an objective evaluation of the facts as they are presented, to even get to the point of being presented to the jury. Doctor Myers' anticipated testimony will be subjective, how she is more susceptible to being threatened or not being able to get out of the situation because of her past battering. And that is totally subjective.

The Sentencing Guidelines provides for just what the defense is trying to present—for facts subjective that can be considered by the Court in mitigating a defendant's sentence

on a defense of duress that doesn't meet the legal requirements of duress. And there is a specific section in the guidelines that [697] provide for that. There is case law that specifically say that the sentencing guidelines can include subjective evidence as far as this person's susceptibility to being placed in a situation where they felt that they were without a choice. But that does not meet the legal requirements that the Fifth Circuit has set out.

The Fifth Circuit specifically in United States versus Posada-Rios, 158 F3d, 832, a 1998 case, said that a threat is present, imminent, and impending only if there is a real emergency leaving no time to pursue legal alternative. The same case also explains that the Defendant has a burden to prove that she had actually tried the alternative or had no time to try it. And there has been no evidence of that in fact, just the opposite.

The Defendant has indicated that she did not believe the Defendant would shoot her at the gun show, so it is not imminent. She has indicated that she was negligent for placing herself and her children in this situation. She has indicated that yes, there were options available, but she just didn't think about them or didn't do them, for whatever reasons, which would be subjective as to why she particularly did not follow through with the available options of calling the police, of alerting security, of contacting friends, of contacting family, all of which she could have done. And she has admitted she should have done that.

[698] And finally, there is ways she could have avoided the harm—just not to go buy the guns; to fill out the forms correctly, she would not have gotten the guns; to avoid the situation altogether. So every one of the elements the Defendant has specifically negated, as opposed to presenting to this Court to prove, which is their responsibility to prove.

So since they are not even entitled to the duress instruction to go to the jury, there is no need to have an expert witness

explain facts that are already in evidence, facts that the lay people can evaluate just as clearly as an expert can. And if the expert is going to come in and give a subjective explanation, that defeats the purpose that it needs to be an objective proof presented to the jury, and would be more apt to confuse the jury as to what actually they need to consider when they consider the elements of a duress defense.

So we think it would be more confusing than not to present the expert, even if a duress instruction was available to the defense at this time.

THE COURT: Is it your position that because it is an objective standard that there is no expert testimony that would ever be relevant or valid?

MS. HEATH: No. I would think that if there is some fact or explanation—I mean, some evidence that has been presented to the jury that satisfies the Court that there is a duress instruction to be given to the jury, that an expert may [699] be able to come in to explain a particular element that is contested, such as one of the four elements, or two of the four elements if there is an objective standard.

Flight or fight, the example I gave in my motion in limine where a prisoner escapes the institution because it is on fire; not that that would be something that a jury could not understand themselves, but perhaps an expert could come in and say, "A reasonable person has instilled in them this flight if they are in danger, and they will flee regardless of what the circumstances may be. So if they have to commit a crime and escape from prison to avoid a fire, then perhaps that was the right thing for this person to do, because every person would do this. This is a reasonable standard. The reasonable man would do this."

We are not talking about a reasonable person here. We are talking about Doctor Myers coming in to say why specifically Keshia Dixon, because of her particular background, is sus-

ceptible to being intimidated by significant men in her life, specifically Pacman in this instance.

So I think that there would be occasions when experts could come in and testify, but in this case we don't even get to make that determination because the Defense has not presented to you objective evidence that is admitted before the jury that satisfies the four prongs of the elements of a duress defense. So we don't even get to the point where we need an [700] expert to explain it to the jury. That would be the Government's position.

THE COURT: Okay. All right. Briefly?

MR. JETT: Judge, I think we have certainly put on enough evidence to get to the duress defense. I mean, I think I she has been real clear as to what the immediate harm was that she was afraid of, and it was very, very close in time. It was immediate because he said, "If you don't do this, I just have to make a phone call, and there is somebody back there with your kids." I don't think it requires him to put a gun to her head right then.

THE COURT: I am not having actually a problem with that one. I think on that one you have probably established it. The way I look at it is if you believe Ms. Dixon's testimony on that, then I think there is evidence that an objective person would feel an imminent threat there. I don't think she had to believe he would kill her there under the circumstances.

But as you get down on the others, the reasonable legal alternative to violating the law, those are some of the ones that I think are a little more problematic.

Let's go ahead and finish up Questioning Ms. Dixon, and I will give that some thought after hearing your arguments, and we will take it up after finishing with Ms. Dixon.

* * * *

[701] THE COURT: Go ahead.

MR. JETT: In terms of—It looks like you are talking about three, the reasonable legal alternative. Well, if you are—It is actually similar to the first element in that if you are there—

THE COURT: Part of the problem I am having is a lot of the argument you are making sure sounds like it is subjective, and you may not want to call it battered women's syndrome, but it sure sounds a lot like it. That is the problem that I am having.

MR. JETT: It does sound a lot like it, but let me make the distinction for you, if I can. Battered woman's syndrome, that term is really not a—It is not a current term that is really accepted.

THE COURT: That is why I don't want to get caught up in semantics. When you say this is not really a syndrome, that doesn't tell me anything. The point is, I think as the Fifth Circuit was pointing out in its cases is that all that tends to show is subjective pattern of thought and behavior by this particular individual because of circumstances that that person found themselves in, and they said that is not relevant. That isn't relevant to this legal standard. And if that is where you are going, then I think Ms. Heath is correct.

MR. JETT: That is not—

THE COURT: That is where Doctor Myers is going to [702] go, is that, "Well, based on this past history, she was in this relationship with Mr. Dixon, this relationship with Mr."—What's his last name? Wright?

MR. JETT: Dixon

THE COURT: "And this is her situation and this is why she did what she did." That sounds very subjective. That is the problem the Fifth Circuit had with it; not that it was called a syndrome or whatever it was called, but I think just the explanation that was being given, it was a subjective explanation, subjective reasons for why this person was doing that.

And they are saying we have to look at objective, somebody has to be able to look at it and give some objective reasoning.

MR. JETT: It is hard to draw the line between where subjective stops and objective begins, or vice versa.

THE COURT: You show the subjectiveness I think and what happened in her past to show the circumstances, because that is the circumstances you have to take, and then you put an objective reasonable person in those circumstances, the circumstances that the Defendant was found in, and then you make a determination as to what an objective or a reasonable person would have done.

MR. JETT: I think that is what Doctor Myers will do. But she will talk about what the research shows and what her experience shows that reasonable people do when subjected [703] to this kind of conduct. Very plainly, that is what it is. And what apparently the researchers have learned about is that when reasonable people are subject to this kind of conduct with an intimate partner, that they see patterns of behavior of the batterers and the batterees. And they are not saying that these people are unreasonable people. What they are talking about is that they are reasonable people who have been subjected to an unreasonable situation.

It is much like somebody who has been a prisoner of war or something and how they react to that circumstance. And I think there has been some research on how they react and deal with, and sometimes actually bond with their captors. So those are reasonable people put in unreasonable circumstances, and science and research has shown that there are patterns of behavior and perception and judgment there.

Well, it is similar, it is not the same here, but it is similar to somebody who is a battered woman. Again, it is not—A syndrome implies a diminished capacity. And what we are going to talk about is not a diminished capacity, but how certain factors operate on a reasonable person.

* * * *

[705] stay in that situation. And that is what the Fifth Circuit is saying—that that is totally subjective and should not be considered for a duress defense.

THE COURT: Let's press forward, and I will give you a ruling sometime before I let him call Doctor Myers. Are you ready for the jury? Are you ready to proceed? You are up, Mr. Jett. Are you ready?

MR. JETT: Yes, Your Honor.

THE COURT: Go ahead and bring the jury in. (Whereupon, the jury entered the courtroom)

THE COURT: Mr. Jett?

MR. JETT: Thank you, Your Honor.

REDIRECT EXAMINATION

By Mr. Jett:

Q. Good afternoon, ladies and gentlemen. Keshia, you look different this afternoon. Would you tell the ladies and gentlemen of the jury why?

A. My mother brought me some clean clothes.

Q. And were you able to put them on this morning?

A. No.

Q. There was testimony earlier that in August you put Mr. Wright—Well, let me ask this. Back in August did you and Mr. Wright get along well?

A. Yes.

Q. And were you having a good relationship?

[706] A. Yes.

Q. And there was testimony that you put him as a name on somebody to contact in an emergency for one of your daughters. Is that correct?

A. Yes.

Q. Now, did that occur before or after—First, when did that occur?

A. It was in August.

Q. So was that before or was it after the abuse started?

A. Before.

Q. Now, these—You said that in December of 2002 your daughter transferred schools. Is that correct?

A. Yes.

Q. As far as you recall, did you fill out new papers or did the old papers simply get transferred?

A. The old papers came when I transferred her from the old school.

Q. So after December you didn't put him down as somebody to call for an emergency?

A. No.

MR. JETT: Judge, before I continue can we get Doctor Myers back in?

THE COURT: Sure. Yes, sir.

MR. JETT: Q. Now, there was some discussion about when Pacman stayed with you and when he didn't stay with you. [707] When did he start actually living with you full time?

THE WITNESS: A. In December.

Q. Is that December of 2002?

A. Yes.

Q. And before that what was the nature of the—How much was he in and out?

A. He was in and out a lot there before that.

Q. There would he sometimes that he would spend the night?

A. Yes.

Q. And other times when he would not?

A. Yes.

Q. was it more frequent sometimes than other times?

A. Yes.

Q. And I am talking about from between August to December?

A. Yes.

Q. When was it most frequent?

A. In November.

Q. Now, and was it—How frequent was it say in August and September?

A. He was there a lot. He was just in and out.

Q. Now, when you pled guilty to the other charge on November the 8th, were you being threatened by anybody?

A. No.

Q. Was—Had he pulled a gun on you?

A. No.

[708] Q. You all had had some fights?

A. Arguments; yes.

Q. But at that point in time did you feel threatened or not?

A. No.

Q. So anything at that point in time you felt you needed to tell the Court about?

A. No.

Q. And there was some conversation about Ted Dixon, your prior husband. Would your girls have gone to live with him? Would the older girls have gone to live with him?

A. No.

Q. Okay. Why is that?

A. They wouldn't want to go live with Ted.

Q. Why?

A. Because he had whipped them. He had beat them.

Q. Had he ever whipped Divinity?

A. Later on, but not during that time; no.

Q. And did he ever whip Divinity to the extent that he whipped the other girls?

A. No.

Q. And which one is his daughter?

A. Divinity.

Q. And she is how old?

A. She is 11.

Q. There was also some testimony about your friend Hollywood [709] having a gun. Doe you remember that?

A. Yes.

Q. Why did Hollywood go get a gun?

MS. HEATH: Your Honor, objection as to why Hollywood got a gun. That is speculation on her part. If she knows because he told her, it is hearsay.

THE COURT: She may know. I wonder why it is relevant.

MR. JETT: They brought up why Hollywood had a gun, and I want to explain why. And it does pertain to an issue in the case.

THE COURT: Go ahead.

MR. JETT: Q. Can you tell us?

THE WITNESS: A. Because me and Ted had got into it, and Ted told me he was going to jump on me and kill me because I told him he couldn't see Divinity.

Q. And Hollywood did what in response?

A. Because he was on the other phone listening to what Ted said, so he went and got a gun.

Q. Did Ted ever come over?

A. No; he just kept calling.

Q. These checks that you were passing, was Ted involved in that?

A. Yes.

Q. Did he pass some checks?

[710] A. He cashed.

Q. Cashed some checks?

A. Yes.

Q. Did he at some point provide evidence against you for the government?

MS. HEATH: Your Honor, we object as to the relevance of that. Ms. Dixon already testified she was cooperating with the Government as well at that time.

THE COURT: I think it goes to the relationship between the two; and, of course, both of you have explored that. Go ahead. Overrule the objection,

MR. JETT: Q. Did Ted provide evidence to the Government to help prosecute you?

THE WITNESS: A. Yes.

Q. Since you all have gotten divorced has Ted done anything to really help you?

A. No. No.

Q. Has he been coming to see you in jail?

A. He has been bringing my daughter.

Q. Why did you put Ted on the visitation list?

A. Because they called back there and told me that—They asked me did I know a Ted Dixon. I told them yes. They asked me who he was. I told him he was my ex-husband.

MS. HEATH: I object to the relevance and hearsay.

MR. JETT: Q. I understand. Don't say what they [711] said. I just want you to say why you put him on the visitation list.

THE WITNESS: A. Because he had my daughter up there with him.

Q. How were you able to see Divinity?

A. When Ted brought her.

Q. Have you been able to see her otherwise?

A. A couple of times my mother was able to come up there and bring them.

Q. Does Ted—How often does Ted bring her?

A. On Sundays sometimes.

Q. When he comes does he ask you questions about your case?

A. Yes.

Q. what kind of things does he ask you?

MS. HEATH: Your Honor, we object to the relevance.

THE COURT: That is hearsay. I sustain.

MR. JETT: Q. Now, there was also some questions of you about why you didn't call the police. Can you tell the jury why you didn't call the police?

THE WITNESS: A. Because I was afraid for my life.

Q. Now, can you tell me whether or not the police could have been at your house all the time?

A. No.

MS. HEATH: Your Honor, we object to this as far as relevance as to whether the police could be there all the time [712] or whether or not she would even know about security, if they have a security guard on the premises that is there 24 hours.

THE COURT: Then you may ask her on cross, Ms. Heath. Both of you have gone into it. Overrule the objection. Let's move on.

MR. JETT: Q. Can you tell us whether or not you thought the police would be able to help you?

THE WITNESS: A. No.

Q. How about all of these—They mentioned friends at church. Why couldn't you tell them?

A. I was afraid for me and my children, and then I didn't know anybody there but my mother and them.

Q. What were you afraid of that would happen if you told somebody?

A. Hookie was with me. I didn't know if he had anything on him. I didn't know nothing. I just knew that he had to come with me.

Q. What did you—There was talk about why didn't you tell the security guard or the gun dealers at the gun shows. What were you afraid of there?

A. I was afraid for my kids. My kids was at the house and there was somebody else with them.

Q. Now, you didn't know any of the security guards at the gun shows, did you?

A. No, I didn't.

[713] Q. Did you know any of the gun dealers?

A. No.

Q. Who was with you the entire time?

A. Pacman, Hookie and them.

Q. Were you afraid of anything if you went up and talked to these people about something other than guns?

A. Yes.

Q. What were you afraid of?

A. That something would happen.

Q. And what is that something?

A. They would either kill me or my kids.

Q. By doing what Pacman asked you to do, what did you hope to achieve?

A. That he would leave me alone; that I wouldn't get beat up, and I don't have to worry about another pistol being put in my face and him threatening to do something to us.

Q. So would it be accurate to say that was your solution to the threats?

A. Yes.

Q. Now, at the time under the circumstances did that seem like a reasonable solution to you?

A. Yes, it did.

Q. Now, there was also some discussion about why you didn't tell all these guys like E and Hookie and Tyshon and T.K. and A.D. and all those guys. Why didn't you tell them?

[714] A. They was Pacman's friends. They knew what was going on.

Q. And Farrah, who is Farrah? That is his sister.

Q. Could you tell her?

A. No.

Q. Why not?

A. She was aware of the stuff that was going on.

Q. Now, there was some testimony earlier that you had actually seen a shotgun.

A. Yes.

Q. When was that?

A. It was in December.

Q. And where did you see it?

A. It was in my closet.

Q. Was it just right out in the open?

A. No,

Q. Or was it concealed in any way?

A. I was on the shelf looking for something, and I saw a blanket and unfolded it and it was sitting there.

Q. Did you know it was there?

A. No, I didn't.

Q. After you found it what did you do?

A. I asked Tyshon about it, and he told me I needed to talk to Pacman, so I paged Pacman and he came.

Q. Then what did you do?

[715] A. I told him he needed to get that out of the house because I didn't want no guns in the house.

Q. Did he get it out of the house?

A. He took it out. He gave it to Tyshon and he took it out.

Q. At that point in time apparently Pacman was willing to get rid of the guns. Is that right?

MS. HEATH: Objection, Your Honor, as to leading the witness.

THE COURT; Sustained.

MR. JETT: Q. Did that change his willingness to keep the guns away? Did that change?

MS. HEATH: Objection, Your Honor. There has been no evidence that he did it willingly. That is facts outside the evidence that has been presented to the jury at this point.

THE COURT: Overruled. You may ask. Go ahead.

MR. JETT: Q. Do you understand the question?

THE WITNESS: A. Can you repeat it?

Q. Sure, We know that apparently Pacman took the shotgun out or caused it to be taken out. Is that right?

A. Yes.

Q. So he did what you asked him to do.

A. Yes.

Q. Is that right? Did it get to a point where he wouldn't have done or didn't do what you asked him to do?

A. Yes.

[716] Q. And when was that?

A. Later on.

Q. Later on did you ask him to get rid of the guns?

A. Yes.

Q. What did he say?

A. He told me he wasn't going to do nothing; that is his place he would do what he wanted to do.

Q. Now, you are also telling us that early on when you got hit it was in certain parts of your body. Do you recall that?

A. Yes.

Q. And those parts were?

A. My shoulder, back, and chest.

Q. Around the time of the gun show, did the nature of that violence to you change?

A. Yes.

Q. And how did it change?

A. He hit me in my face and choked me, along with the rest of it.

Q. Had he done those things before?

A. He had never hit me in my face.

Q. The apartment on Forest Springs, how many months did you pay the rent?

A. December.

Q. Did you pay it in January?

A. No. I wasn't working.

[717] Q. Did it get paid?

A. No.

Q. Why didn't you pay it in January?

A. Pacman was supposed to pay it but he didn't pay it.

Q. Did you have the money to pay it?

A. No.

Q. There was also some testimony about why during the Christmas holidays you didn't tell somebody about what was going on. And so over at Christmas time had you been threatened with a gun—Let me ask it this way. Had he pointed a gun at you? Had Pacman pointed a gun at you?

A. No.

Q. Had he hit you in your face?

A. No.

Q. At that point in time at Christmas time did you think your kids were in danger?

A. No.

Q. When did you think that they were in danger?

A. When Pacman threatened to kill us, and when I heard them talking about the so-called murders that they supposedly done got away with.

Q. Now, you were telling the jury about when asked about why you didn't do certain things, you said, "I wasn't thinking like that." And what did you mean when you said you weren't thinking like that?

[718] A. What I meant was that I was trying to protect me and my kids. I didn't want any harm or anything coming to us. I didn't want us to end up getting killed, so I did what he said.

Q. And so your strategy to keep you all safe was to do what?

A. Is to do what I was told to do.

Q. At the time did that make sense to you to do?

A. To do what I was told to do?

Q. Yes.

A. Yes, it did.

THE COURT: Mr. Jett, you used 15 minutes. You need to wrap it up.

MR. JETT: Yes, sir.

MR. JETT: Q. Did you want to buy the guns?

THE WITNESS: A. No.

Q. Did you have any use for the guns?

A. No.

THE COURT: Mr. Jett, that has already been covered plenty. If you don't have anything new to ask—

MR. JETT: I have two more questions, Judge.

THE COURT: Okay. Finish it up.

MR. JETT: Q. How do you feel about—Let me ask this. Would you have bought the guns without the threat?

THE WITNESS: A. No, I wouldn't.

Q. How do you feel now about having bought them?

A. I feel bad about it.

[719] MR. JETT: Pass the witness.

THE COURT: Ms. Heath?

RECROSS EXAMINATION

By Ms. Heath:

Q. Ms. Ashford, or Ma. Dixon, you indicated that since your divorce Ted Dixon hasn't done anything to help. Is that correct?

A. No, he hasn't done anything for me.

Q. Okay. So providing child support for you doesn't help?

A. It is something that I took him to court on.

Q. So his providing child support money to you does not help you.

A. It helps a little bit. That is it.

Q. And how about his continuing to maintain a relationship with his daughter Divinity. That doesn't help you?

A. That is not something that he is doing for me.

Q. Okay. So that does not help you to know your daughter is maintaining a relationship with her father?

A. Re has never had a problem maintaining a relationship with Divinity.

Q. That is not the question. It does not help you in any way for your daughter to maintain a relationship with her father?

A. In spite of how I feel about Ted, no, it doesn't.

Q. And it doesn't help you at all that he is available to pick them up from school or drop them off when you are not [720] available. That doesn't help you.

A. Yeah, he did that.

Q. And it doesn't help you at all that he brings Divinity up to the jail to visit with you. That doesn't help you at all.

A. That is not the only reason why he does it.

Q. No, that is not the question. It doesn't help you at all for Ted Dixon to bring your daughter up to visit you?

A. I appreciate him bringing her.

Q. And it doesn't help you to know that Ted Dixon was available to take the three girls in the event that your mom didn't take them, to keep the girls in the schools that they were in when you went to prison. That doesn't help you at all.

A. I didn't need Ted to take my girls. My mom was going to do it. It is something he offered.

Q. That is a back-up plan that didn't help you at all to know that Ted Dixon was available to take your girls in the

event you went to prison and they wanted to stay in the same schools?

A. No, because I was not going to do it.

Q. You mentioned one of the reasons why you didn't contact the security at the gun show or call the police—you didn't know them; you didn't have a personal relationship and you didn't know them.

A. No, I didn't.

Q. So you don't want to call in strangers to help you. Is that what you are telling the jury?

[721] A. No, that is not what I am saying.

Q. So you put more faith in Pacman and Hookie and T.K. and A.D. and E and Little Half than law enforcement, than the police.

A. No. I put my faith in trying to keep me and my kids alive.

Q. In trying to keep you and your kids alive, you did not think it was reasonable then to call the police?

A. I didn't know if something would happen to me if I tried or what.

Q. You didn't think it was reasonable to tell your mom about it?

A. I didn't want to get my family in danger.

Q. You didn't want to think it was reasonable to tell your dad or stepdad about it?

A. I didn't want to put my family in danger.

Q. Not only are you protecting yourself and your kids, you are protecting your mom and stepdad?

A. I had enough to worry about with me and my three.

Q. Pacman never threatened your mom.

A. But he knew where I lived.

Q. Pacman never threatened your mom, did he?

A. No.

Q. Never threatened your father?

A. No.

[722] Q. Never threatened your stepfather?

A. No.

Q. Any of your sisters or brothers?

A. No.

Q. You indicated that you believed it was a solution to the threats, the threats of getting beat up, a pistol in your face, threats to you to your children, you believe it was a solution to buy the guns. Is that correct?

A. Yes.

Q. After the first gun show, did all of the heating stop?

A. No. We were still into it.

Q. So that wasn't a solution, was it?

A. At the time I thought it was.

Q. So when you go to the second gun show, you know buying those guns aren't going to stop any of that. You know that.

A. Yes.

MS. HEATH: Pass the witness.

THE COURT: Ms. Dixon, you may step down.

MR. JETT: Judge, I have another question.

THE COURT: No, sir. You may step down. Call your next witness. We explored it plenty. Call your next witness.

MR. JETT: Call Kelly Oates.

THE COURT: Agent Oates.

(Whereupon, the oath was administered by the Court)

* * * *

[741] THE COURT: And so Defense Exhibit No. 6 is admitted for record purposes only.

MR. JETT: And that is all I would need Agent Oates for, Your Honor.

THE COURT: Agent, thank you. Do you want to make your bill with respect to Doctor Myers?

MR. JETT: I know you want it to be short.

THE COURT: I am not going to let you put on her whole testimony. I want to hear a brief synopsis from her as to the opinions and conclusions, and the basis for that, and I think we can do that in 10 or 15 minutes. If you can't do it in 10 or 15 minutes, I will do the questioning.

MR. JETT: I am sorry. Are you going to allow me to put her on briefly then?

THE COURT: Yes; briefly. But I am not going to let you play out the entire direct examination. I want about 10 or 15 minutes worth of conclusions, opinions, the basis for that, and I think that can be done fairly quickly.

MR. JETT: I am sorry. I thought you were wanting me to state it.

THE COURT: I don't mind you getting it from her.

MR. JETT: We call Doctor Myers.

THE COURT: If you would please, ma'am. Lets me go ahead and administer the oath, Doctor Myers.

(Whereupon, the oath was administered by the Court)

[742] TOBY MYERS,

TESTIFIED ON DIRECT EXAMINATION BY MR. JETT AS FOLLOWS:

Q. Would you state your name, please?

A. Yes. My name is Toby Myers.

Q. Without going through all of your qualifications, I am going to show you what has been marked Defendant's Exhibit No. 1, and ask is this a summary of your educational background and your qualifications in your area of expertise?

A. Yes, sir, it is.

Q. And if you were to—Would this constitute a summary of what your testimony would be as to your qualifications?

A. Oh, yes; as to my qualifications. Yes, sir.

Q. Okay.

MR. JETT: Judge, we will offer Defendant's Exhibit No. 1.

THE COURT: All right. Any objections for the record?

MS. HEATH: No objections for record purposes.

THE COURT: Admitted for record purposes.

MR. JETT: And so I have provided a copy to Eric here, Your Honor, if the Court wants to review it.

MR. JETT: Q. Doctor Myers, would you—Let me ask this. You were hired by or asked by me to do an investigation and evaluation of Keshia Dixon. Is that correct?

THE WITNESS: A. Yes, sir.

[743] Q. Okay. Would you tell the Court what it is that you did to prepare to give your opinion:

A. Yes. I met with Keshia Dixon, I took a long and detailed social history—

Q. How long did that take?

A. I met with her on two days in June and one day in July. I have had telephone conversations with her. I met with her mother and two older daughters.

Q. And can you tell me how much time you have spent talking to Ms. Dixon?

A. Probably about 12 hours to 14 hours.

Q. And how long did you talk to each of the daughters?

A. I met with the grandmother and the two daughters for about an hour and a half in Greenville, and I have spoken with them on the phone probably another 30 minutes.

Q. And did you review any other documents?

A. Yes, I reviewed many documents.

Q. Can you tell us the documents that you reviewed?

A. I can hand you a list of them. Would that be easier?

Q. That would be easier. It will go faster.

A. It will go a lot faster.

MR. JETT: Can I just read the list, Judge, to make this move faster.

THE COURT: Yes, sir. Go ahead.

MR. JETT: Okay, Did you—I am going to read a [744] list and then ask you after I finish if you reviewed all these matters. You reviewed the judgment Ms. Dixon's prior criminal case?

THE WITNESS: A. Yes, sir.

THE COURT: Just read them off, counsel. Just read them off.

MR. JETT: Q. And the presentence report in the prior case, the indictment in this case, the criminal complaint by Agent Oates in this case, the application and affidavit of Todd Nunely in this case, the transcript of the hearing on the motion to revoke pretrial release, a book called *Compelled to Crime* by Beth Richie, the National Institute of Justice Publication on battering. Let me get the title.

THE WITNESS: A. I have it right here.

Q. And it is called *The Validity and Use of Evidence Concerning Battery and Its Affects in Criminal Trials*, which is a Department of Justice publication. An article by Barbara Hart called *Lethality Assessment*, divorce and child support documents, an order affecting the parent/child relationship, and a protective order relating to Keshia Dixon and Ted Dixon, Ted Dixon's his criminal record, criminal records regarding Thomas Earl Wright, his felony drug conviction, an allegation of family violence by his sister, criminal records regarding Cory Rayon Harris, in particular a felony aggravated assault conviction. Is that a good summary of what you reviewed?

[745] A. Yes.

Q. And also to add to your vitae, have you treated and worked with battered women?

A. Yes, I have.

Q. How many, about?

A. A thousand or maybe more.

Q. Have you also treated and worked with batterers?

A. Yes, sir.

Q. How many?

A. About the same amount.

Q. Has the subject matter of domestic violence become a subject of research and study?

A. Yes, sir, it has.

Q. Is there a body of scientific research that relates to it?

A. Yes, sir, there is.

Q. Is it accepted in the scientific community?

A. Yes, sir.

Q. Is the research also accepted by the United States government?

A. Yes, sir.

Q. Have you testified as a witness and qualified as an expert witness in civil and federal—Excuse me. Criminal and civil cases?

A. I have.

Q. About how many, please?

[746] A. Upwards of 40, but around 40; a little more.

Q. Has this all been in the subject of domestic violence?

A. Yes.

Q. Could you briefly tell the Court what is domestic violence?

A. Domestic violence is a pattern of coercive control by one party, generally the male, over another party, generally the female, where there are tactics of power and control used and violence and sexual abuse.

Q. I am going to show you what has been marked as Defendant's Exhibit No. 2, and just ask you, is this a summary of the elements of what would be a power and control relationship?

A. Yes, they are.

MR. JETT: We will offer Defendant's Exhibit No. 2.

THE COURT: Ms. Heath, any objection admitting that for the record?

MS. HEATH: No objection for the record, Your Honor.

THE COURT: Admitted.

MR. JETT: Q. Exhibit No. 2 reflects about eight factors that often make up a power and control relationship. Do you have your copy there?

THE WITNESS: A. I will get it right away. Yes.

Q. Do you have yours to refer to, or do you want to use this?

A. Either one you want.

Q. Why don't you just use yours. Can you—Is it necessary to have all of these characteristics to have a relationship [747] that is based on power and control?

A. Well, if there aren't children involved, usually just about all of them are involved.

Q. Okay. And when somebody is a victim of domestic violence, is a common term that we used for them battered woman?

A. Yes.

Q. Is it most often a female who is the battered person?

A. Most often.

Q. Okay. Could you summarize for the Court how the battering affects the victim?

A. Yes. Once someone is subjected to this, typically a battering relationship starts off very nice and loving and ardent, and the woman thinks all this attention, "Gee, this is great."

Q. I really wasn't asking how it worked. I just wanted to talk about the affects.

MR. JETT: Let me see if I can lead her a little bit, Judge, and do that.

MR. JETT: Does the battering cause physical harm?

THE WITNESS: A. Yes.

Q. Does the battering damage self-esteem and the self-worth of the victim?

A. Yes. It causes physical, emotional, and psychological harm.

Q. Does it cause a person to become isolated, withdrawn, or [748] dependent? Just answer yes or no.

A. Yes.

Q. Okay. We are trying to make a bill, and so we are—

A. Okay.

THE COURT: We are just hitting highlights here is what we are trying to do, Doctor Myers.

MR. JETT: Q. Does the victim become subservient to the batterer?

THE WITNESS: A. Yes.

Q. Does the victim learn to change her behavior so as not to anger the abuser?

A. She does.

Q. Can the battering cause a person to engage in conduct that the victim would not otherwise engage in but for the battering?

A. It can.

Q. Can that cause criminal behavior?

A. It can.

Q. Would the battering affect the perceptions of the victim?

A. Yes.

Q. Would the battering affect the judgment of the victim?

A. Yes.

Q. Okay. Would the battering affect the behavior of the victim?

A. Yes.

Q. Okay. Can you—Is somebody who has been battered, do [749] they necessarily have a mental disease or defect?

A. No, they don't.

Q. Do they have a—

A. They could have, but ordinarily they don't.

Q. Do they have a mental condition or illness?

A. No

Q. Is there something called a cycle of violence?

A. Yes.

Q. Can you briefly explain what that is?

A. Yes. It is called—There is the violent episode which is called the explosion, and after that initially there is usually a stage called the honeymoon or the tranquil stage, and then after that there is the tension-building stage where things start building up again until another explosion.

Q. Okay. Does this occur once in an abusive relationship or does it occur over and over?

A. It occurs over and over until the honeymoon stage or the tranquil stage gets lesser and lesser, until sometimes there is not even a very pleasant time afterwards.

Q. Okay. Why does a woman stay in a battering relationship?

A. Well, the most dangerous time in a woman's life is when she is leaving a relationship is one reason. Another reason is financial. Another reason is fear and terror. Another reason is she doesn't have a well-laid plan of how she is going to succeed without this. Another, and many times an overriding [750] reason, is what she wants is the abuse and violence to stop, not the relationship. And she is trying to figure out how to make it work.

Q. Is it common for the victim of a battering relationship to not seek help from the police, authorities, or other people?

A. Yes, it is.

Q. Okay. Why?

A. Because of shame is one of the reasons.

Q. What are the other reasons, briefly?

A. Because it might escalate the violence.

Q. And does economics play a part?

A. Economics plays a part; danger plays a part.

Q. Do women often have a strategy for evading the battering?

A. Almost all women try to figure out what to do to make this better.

Q. Okay. And what is the—What is a common—Is there a common strategy to avoid the battering by compliance with what the batterer wants?

A. I think initially sometimes women register a lot of protest and fight back, but sometimes they realize that their fighting back isn't going to be very helpful and just makes it worse, so she learns to quiet down.

Q. Are there misconceptions about whether a victim of domestic violence is really trying to help the situation or not?

A. Yes.

[751] Q. And why is that?

A. Because it looks like she is acting not in her own best interest sometimes.

Q. Are the things they do effective?

A. Sometimes yes, sometimes no. Usually not.

Q. Okay. Let's talk about Keshia Dixon.

A. All right.

Q. You told us how you know her.

A. Yes.

Q. And how much time you have spent with her.

A. Yes.

Q. The method that you used to evaluate her, was that an accepted method in your field?

A. Yes, it is.

Q. Did she have any kind of scientific or educated knowledge about domestic violence and its effects?

A. Not that I know of.

Q. Did she appear to display any?

A. No.

Q. Okay. Is she a battered woman?

A. Yes, she is.

Q. Has she been the victim of domestic violence?

A. Yes, she has.

Q. What is your conclusion based on?

A. My conclusion is based on my experience, studies, [752] generally accepted definitions in the field and in the literature.

Q. Was she battered both by Ted Dixon and Thomas Earl Wright?

A. She was.

Q. The relationship with Ted Dixon, did that become a power and control relationship?

A. Yes, it was.

Q. The factors that are on Defendant's Exhibit No. 2, the power and control wheel, did they all exist in that relationship?

A. Yes.

Q. Did she or can you tell us why she stayed in that relationship?

A. Well, Ted Dixon was stable, her family thought he was nice, he took care of her, he was willing to take in her daughters, he helped her get an education where she could earn a living, but then he began to do other things like sabotage her. But he looked like a dream come true initially.

Q. Okay. Did he engage in all the conduct related in the power and control wheel?

A. He did.

Q. Okay. Did his relationship—Did the power and control relationship over her continue after the divorce?

A. Yes.

Q. Okay. Did the effects of the battering continue, Ted's [753] battering, continue on Keshia?

A. Yes, it did.

Q. Okay. Did the experience of being a victim of battering by Ted Dixon contribute to the relationship with Thomas Earl Wright?

A. Yes.

Q. And how did it do that?

A. I think she figured she survived Ted so she could take on Wright, that she thought she was tougher than she was, and that relationship escalated.

Q. Okay. Did she—Did Ms. Dixon have a power and control relationship with Thomas Earl Wright?

A. Yes, she did.

Q. Was he the one in power and control?

A. Yes, he was.

Q. Did they have all the eight factors of the power and control wheel in that relationship?

A. Yes.

Q. Did the relationship start out with those characteristics?

A. The relationship started out nicely.

Q. Did it start in a typical way that battering relationships start?

A. It did.

Q. Okay. As time went on did the relationship get better or worse?

[754] A. It got worse.

Q. Did the relationship, was it different somewhat than other relationships in regard to the amount of time that it took to reach the power and control relationship situation?

A. It was a relatively short relationship, but yes, it—Do you want to do your question again? I think I lost it.

Q. Sure. The amount of time it took the relationship to evolve to one relating to power and control, was that a short time or a long time?

A. Short.

Q. By early January of 2003, would you say that power and control relationship was in full swing, so-to-speak?

A. Yes.

Q. Okay. What were the—Can you tell me the factors that made it that kind of relationship?

A. By January?

Q. Yes.

A. Well, she was more vulnerable because she had lost her job so her resources were diminished. He had introduced hitting her into the face, he had introduced guns into this relationship.

Q. Okay. Did he discover another way in which to cause her to do things?

A. Yes. He threatened her and the children.

Q. Did the violence escalate over a period of time?

[755] A. Yes.

Q. And it got worse just before the gun shows. Is that right?

A. Yes.

Q. How did all of these circumstances affect her ability to make a decision about whether to buy those guns or not?

A. I think in her heart and her mind she didn't have a choice.

Q. Was she afraid of him?

A. Very much so.

Q. Were her fears well-grounded?

A. Yes, sir.

Q. What was the purpose in buying the guns?

A. To buy some time.

Q. And what was she buying time to do?

A. Trying to figure out what to do, hoping something would happen. One of the things was going to jail.

Q. Okay. Would she have—Without the threats of Thomas Earl Wright, would she have bought the guns?

A. No, she wouldn't have.

Q. Is it consistent with a power and control relationship for Pacman to force her to do something illegal?

A. Could be.

Q. Okay. Would it be consistent with a power and control relationship to put the batterer, the victim, excuse me, at risk by doing something illegal?

[756] A. It could be.

Q. Okay. Was it in this situation?

A. Definitely.

Q. In this situation did it appear that Mr. Wright had a concern for her well-being or not?

A. I think he had a flagrant disregard for her well-being.

Q. Can you tell me, was she intimidated into doing something illegal by a threat of death or serious bodily injury?

A. Yes.

Q. Was there any—Who was the responsibility put on?—Who did he put the responsibility on for buying these weapons?

A. He put it on her.

Q. How did he use the threat to her children?

A. He said that for her to remember that they were not home alone, and that he could make a phone call in a minute.

Q. Would—At the time she bought the guns on January the 3rd, would she have—Did she believe she had an option but to do something else?

A. She didn't.

Q. Did she—What did she think that she was achieving by buying the guns?

A. She was buying a little more time.

Q. From your observation of this relationship, was she somehow reckless or negligent to put herself in a situation where she would be forced to choose criminal conduct?

[757] A. No. I think it goes to how terrified she was that I don't think she would have bought the guns or would have agreed to buy them even if she wasn't going to get in trouble, and I think she knew there was tremendous potential.

Q. From her perspective based on her experience, did she believe she had a legal alternative to violating the law?

A. I didn't see that she thought she had one.

Q. Why did she not call the police and seek help?

A. I don't think she thought it would do any good.

Q. Why didn't she talk to her family or somebody else?

A. I think she was embarrassed and didn't want to involve them, and felt like she made a hard bed and she had to lie in it.

Q. You said she wanted to hang on and buy time. What was she buying time to do?

A. She was buying time just to stay alive one more day.

Q. And a particular goal she had in mind, if something might happen down the road that would get her out of this?

A. Well, I think one thought, she thought that if she was arrested that would get her out of it. Also she was thinking about what could she do to do this.

Q. Would it be a—If somebody is a battered woman and subject to domestic violence, would her behavior that you have seen in this case and you—You have heard her testimony, have you not?

[758] A. Yes, I have.

MR. JETT: For the record, Judge, Doctor Myers was here for Joycelyn's testimony and for Ms. Dixon's testimony,

THE COURT: All right.

MR. JETT: Q. And based on that testimony, plus what you have heard, can you tell us if she believed that she was under duress at the time that she purchased the firearms?

THE WITNESS: A. I don't know if I can make a legal conclusion, but I felt that she did not—She did not in her mind think there was any other choice.

Q. Okay. Now, we have gone over all of these things and we have talked about January the 3rd. All the same factors, were they operating on her for December 11?

A. Yes.

Q. Excuse me. January 11. So we are talking about January 3rd and January 11.

A. I think it was the 4th and the 11th.

Q. Right. That is correct. I am sorry. For the 4th and the 11th, were all the same factors working on her for the purchase of all of the guns?

A. Yes.

Q. Was her motivations the same?

A. Yes.

Q. Was her state of mind the same?

A. Yes.

[759] MR. JETT: I think that all I have.

THE COURT; Ms. Heath, anything you want to add?

MS. HEATH: I believe for a proffer it is not necessary to cross examine a witness.

THE COURT: It is not.

MS. HEATH: Nor object during the testimony so the defense has a full opportunity to present its evidence.

THE COURT: Correct. Thank you, Doctor Myers. You may step down.

MS. HEATH: I guess for record purposes, though, we would request that Doctor Coons' report that the Court has already received be included in the record, just in an abundance of caution, so that all the testimony is available for expert testimony.

THE COURT: Yes. And that will be made part of the record. Anything else we need to address with respect to this bill?

MR. JETT: No. Your Honor.

THE COURT: Well, I think my ruling obviously will remain the same. This has confirmed—This is exactly what was being offered in the *Willis* case, and I think as Doctor

Myers stated, in her mind she didn't believe she had a choice. It is all subjective, and based on the circumstances from her past history I think that is exactly what the Fifth Circuit said in *Willis* is not admissible to establish a duress [760] defense. So I think my ruling will remain the same. You have your bill.

Let's take a break. Why don't we do the charge conference this afternoon? We will go ahead and stay here. Take a break and come back on into the conference room. I have a draft prepared. I may want to make a few changes. And we will give you each a copy, and we will go on and give you a chance to read it and go on into the charge conference.

MR. JETT: How soon would you like us there?

THE COURT: Say about 15 or 20 minutes. Come back in and check with us. Let's do this. Check back about a quarter till 5:00, and we will see if we have it ready, All right. We will be in recess.

(Brief Recess)

THE COURT: All right. On the record. After both parties have rested and closed, one of the parties resting under protest, but both parties have rested and closed, and outside the presence of the jury, I have prepared a court's charge to the jury, and the parties have been given an opportunity to read it.

Ms. Heath, we will begin with you as far as objections, corrections.

MS. HEATH: Yes, Your Honor. On page six of the charge in the credibility of witness section, the Government's [761] submitted instruction included reminding the jury, especially in this case since the Defendant has testified, that the Defendant is a witness as well, such as in the second paragraph second sentence. "An important part of your job will he making judgments about the testimony of the witnesses

who testified in this case," to "witnesses, including the Defendant, who testified in this case."

And then at the end of it the Government recommended a sentence, "the testimony of the Defendant should be weighed and his or her credibility evaluated in the same way as any other witness."

THE COURT: Okay.

MR. JETT: Judge, I would disagree with that because it focuses on the Defendant. It makes the Defendant look different than another witness. And I think it is clear to the jury that she was a witness and a witness for all purposes. And to put those provisions in would focus them on her and make her different. I think the point is to make her be viewed just like any other witness. And so I would disagree with Ms. Heath, and I think that your charge on credibility of witnesses is fine.

THE COURT: Okay. I don't mind, "You are the sole judges of the credibility or believability of each witness, including the Defendant," because as you get down in some of the others did they have a relationship with the Defendant, and [762] they may tend to exclude the Defendant. So usually we put something in there about the Defendant.

MS. HEATH: Right. Because throughout the document we refer to the witnesses and then we refer to the Defendant. So there are definitely different titles given to those individuals.

MR. JETT: I will object to that.

THE COURT: Well, your objection is noted. So I will put that up in that sentence "You are the sole judges of the credibility or believability of each witness, including the Defendant, and the weight to be given the witnesses' testimony." And the rest of it should flow from there. All right.

MS. HEATH: Page seven, the very last sentence in the impeachment by prior inconsistencies need not be there.

THE COURT: Take that out. Okay.

MS. HEATH: Page 12, the title really should read "Acquisition of a firearm by a person under indictment."

THE COURT: That is true.

MR. JETT: I agree with that.

THE COURT: Okay.

MS. HEATH: And then page 13, actually the possession charge is really not relevant in a situation where it is an acquisition of a firearm, especially since it is not even a contested issue at this point.

[763] THE COURT: Okay. Do you just want to leave that out, then?

MS. HEATH: I would say it is extraneous.

THE COURT: Mr. Jett?

MR. JETT: I like the way it is.

THE COURT: What is it relevant to? Where else do we use possession?

MR. JETT: If I may just have a moment.

THE COURT: Of course, that came out of your requested—

MS. HEATH: I know.

MR. JETT: If the Government asked for it, Judge, I think they should be bound by it. I think they should be estopped and charged equitable estoppel here. Laches have a comeback in the law, so I don't see why we can't apply it in this situation.

THE COURT: Okay. I think we can omit that.

MR. JET: Can I have a moment to look at the indictment, Judge, before we finally decide?

THE COURT: Sure.

MR. JETT: I don't have any further comment.

THE COURT: Okay. I will remove that. I don't see that that is relevant to the specific charge. Okay.

MS. HEATH: With regard to page 17, the duress instruction, first, we just renew our objection to including a [764] duress instruction on here, based on the fact that the Government does not believe that the Defense has established by an objective standard any of the elements of duress in order to present it to the jury. And therefore, we believe that this is not a proper instruction to give to the jury at this time since the defense truly has not convinced the Court of the fact that each of these elements has been reached when viewed in an objective standard.

THE COURT: Okay, I am going to go ahead and give it. And certainly I have been thinking about it. It is frankly a close call in my mind, but when it is a close call, better to give it than not.

MS. HEATH: Then we would request that it be the standard Fifth Circuit duress instruction, which is worded I believe a little bit different than this.

THE COURT: Where?

MS. HEATH: Well, regardless of the Fifth circuit standard, let me refer you first to on page 17, the third paragraph down, "If the proof should fail to establish by any essential element of the Plaintiff's claims," and that should be the Defendant's claims, and I don't have—The standard instruction that I have does not even have that sentence, so I don't know how to correct—

THE COURT: That comes out of a civil case. That is where she pulled this out of.

[765] MR. McLAIN: It doesn't even make sense if you change plaintiff to defendant anyway.

MS. HEATH: That is why I am having a hard time even with the introduction of it. It is my understanding with the Fifth Circuit charge, it indicates that "If you conclude the Government has proved beyond a reasonable doubt that the Defendant committed the crime as charged, you must then consider whether the Defendant should nevertheless be found not guilty because her actions were justified by duress or coercion."

In this it does not even indicate that the jury needs to consider whether or not the Defendant—whether the Government has proved the other elements of the crime to get to the duress. So they could potentially not even address the elements of the underlying offenses and go right to duress, where they really need to consider the elements of the offense first before they then consider the elements of duress.

THE COURT: Okay, Now, the four elements, are those okay?

MS. HEATH: The four elements in what I have printed out are a little easier I think to read in their description.

THE COURT: Okay. Well, let's go back up to this.

MR. JETT: Are we talking about the elements or are you looking at something else?

THE COURT: I am still dealing with this first part [766] of the charge.

MR. JETT: I will have a comment on the elements, but if you are going to deal with that, I will certainly wait on that.

THE COURT: Well, I think one way we could do that, that third paragraph, just eliminate that entirely. That is something that we put in a civil case. What about that, Mr. Jett? Because of that sentence "If the proof should fail to establish any essential element"—

MR. JETT: I agree with that. We are not plaintiffs. And I may be a defendant, but we don't have plaintiffs, and so—Let me read the rest of the paragraph again. Well, if we are looking at the third paragraph, I agree to take out the part about, I guess the last sentence. Rut the first sentence is—Really I don't see that it is a problem. All it says is "you can consider the testimony of all of the witnesses regardless of who may have called them."

THE COURT: We have already told them that, thought, in the previous section, so I don't see that as necessary here. In either a separate paragraph or the credibility of witnesses paragraph we tell them to consider all of the testimony. So see that as unnecessary here. I will just eliminate that.

Okay. Let's get down to the elements. And of course, these come out of that *Willis* case, I think, pretty much. I like your fourth one better because it doesn't have that direct [767] causal relationship.

MS. HEATH: That fourth one is very confusing. This is a simpler one.

THE COURT: Take a look at that.

MS. HEATH: And one minor thing about the duress charge. "The defendant" is capitalized throughout, and in the rest of the charge the defendant is in small case. I don't know whether you care about that, but it is just not consistent.

THE COURT: Okay.

MS. HEATH: I don't mind emphasizing that the Defendant has the burden of proof in this.

THE COURT: Mr. Jett, what do you think?

MR. JETT: I prefer the one out of *Willis* for two reasons. One, number four says, "a reasonable person would believe," and that is not in the *Willis* charge.

THE COURT: It says "can be reasonably anticipated."

MR. JETT: I understand can be reasonably anticipated, but I anticipate that there will be an argument that she is not a reasonable person, for whatever reason, and think the *Willis*—Because it doesn't go to her. It just says there is a direct causal relationship.

Now, the other objection I have is where it says "committing the criminal action he would directly avoid the threat and harm." And again, that is not in the *Willis* case, [768] and the "directly" bothers me, because—

THE COURT: Where are you?

MR. JETT: I am on four.

THE COURT: Still on the Government's proposed?

MR. JETT: Yes.

THE COURT: Okay.

MR. JETT: And that bothers me, because part of the Government's cross, and I anticipate the argument will be that, you know, there wasn't going to be immediate harm to her right there in the gun show, and so, therefore, there is not duress. And I am afraid that they will take this directly to mean that we have to prove that she was going to be harmed right there. That is why I like the one in *Willis* better, because it doesn't put really a time limit on it, and this seems to. And I think that is detrimental to my client.

THE COURT: *Willis* does to a certain extent, because that is part of the first element—"imminent and impending threat."

MR. JETT: Right. But it is in that element. I don't want to put it back down here.

THE COURT: How do you see that it puts it in that?

MR. JETT: I guess I didn't make myself clear. It says that he would directly avoid the threat and harm. The word

"directly" is the problem, because I think "directly" could be taken as it would avoid her being harmed right then, [769] and the testimony was "I was afraid he would either call and have my kids hurt or when we got home he would do something to us."

THE COURT: So you see that as being a time rather than a relationship.

MR. JETT: Yes, sir, I do. That is correct. And so I don't want to have that time issue in there.

Now, if we were to say that instead of a reasonable person, just that a person would believe that by committing the criminal action he would avoid the threat and harm—

THE COURT: I am going to leave reasonable in there, because it is objective. What about leaving out the "directly"?

MS. HEATH: Well, the fourth element as proposed in the charge talks about a direct causal relationship, so that is where the "directly" comes from. They are just saying it a different way.

THE COURT: I see that, too, as direct meaning relationship, meaning commit the crime you avoid the harm. That is the direct, rather than some kind of time requirement as you are reading it.

MR. JETT: Well—

THE COURT: I mean, the Government may well argue—I don't know what they are going to argue. They may want to argue that she wasn't afraid—But I think that goes to [770] element one, that she wasn't afraid that they were going to shoot her at the gun show, then somehow she didn't have any imminent or impending threat. But I see that as going to element one.

MR. JETT: And I understand that. But to me it seems it is different to say there is a direct causal relationship as opposed to directly avoiding the threat and harm.

THE COURT: I think it is saying the same thing; just another way of saying it.

MR. JETT: Well, I prefer the fourth element in the *Willis* case.

THE COURT: I am going to give it the way the Government has it. I think to the jury that would be easier for them to understand. And I think it says the same thing. "Direct causal relationship could be reasonably anticipated" —so we have to leave reasonably in there—"between the conduct alleged to be criminal and avoidance." So that is the causal relationship.

MR. JETT: Can I speak to the "reasonable" thing?

THE COURT: Yes.

MR. JETT: Again, element four, it says that a direct causal relationship may be reasonably anticipated, but it says the causal relationship would be reasonably anticipated. It doesn't talk about that you have to find the individual to be reasonable. Now, I mean, I think—

[771] THE COURT: Because that is not the issue that the individual, whether she is reasonable or not. The issue is what a reasonable person would have thought. That is the issue.

MR. JETT: I understand. But that is not the element, that is not the fourth element. That is not what it says. The fourth element doesn't speak to whether the person is reasonable or not reasonable. It speaks to a reasonable relationship between the criminal action and the avoidance of a harm. It doesn't talk about a person. It talks about a relationship, a causal relationship between the criminal action taken and the avoidance of harm. It doesn't deal with a person at all.

THE COURT: I think it does by saying "could be reasonably anticipated." I will overrule that objection. I will leave "reasonable" in there, and I will just grant the one the

Government has. And you have your objection. You objected to that. I will hold on to this for a second while I make that.

MS. HEATH: My final objection is to actually the bulk of the remainder on page 18, which appears to go directly to—

THE COURT: It has a lot of subjective—I have made some changes on it as I was looking at it while you were looking at it. It is pretty much what I think Mr. Jett had requested. And so that is what I have put in there as the [772] draft. But as I started reading it, it occurred to me there were a lot of subjective components to it. So we will have to change that.

MR. JETT: Can I speak to that, Judge?

THE COURT: Uh-huh.

MR. JETT: That language is taken right out of the footnote of *Willis*.

THE COURT: Part of it; not all of it. And certainly it is—You know, like that first sentence, "In determining whether the elements of duress are met, you may take into account the situation." The footnote says "objective situation."

MR. JETT: Then you can put objective situation to that and I wouldn't object to it,

THE COURT: I am. I am going to put that in there. But I think there are some other problems. Towards the bottom, "You must consider the circumstances from the perspective of the accused, taking into consideration her life circumstances, her past history." Now, with her past history with a person alleged to have made the unlawful threat, I think that is all right, although as I read that footnote—I am just throwing this out, and see what you think and you think about it—that is where it seemed to me that the past history, her past relationship and past history with Wright goes to that well-grounded apprehension, that fear that has to be a [773] reasonable fear. You take into account that relationship. But

then that footnote goes on to explain what may appear to be irrational in a vacuum may not be irrational given the person's relationship.

I was contemplating putting that language pretty much from the footnote, but in connection with directing the jury's attention to the reasonable well-grounded tear. And they can take that. That is where I think that is relevant. It is still an objective determination, but seeing the evidence as they find it to be based on her relationship with Wright.

MR. JETT: That is kind of—That is the way I interpret the footnote. But like I said, I like the way it is written in the proposed charge. Like I said, it is taken from what I proposed, and it is my request to do it that way.

THE COURT: What specific changes did you have in mind? Do you have any?

MS. HEATH: Yes, Your Honor. For one, it continually refers to the Defendant as opposed to a reasonable person or an objective person. I think the Court should consider replacing some of the verbiage in here, such as three sentences down, "In order to show the Defendant's alleged illegal conduct as a result of duress or coercion, it must be shown that the Defendant's fear was well-grounded when considered to be in the shoes of a reasonable person or considered objectively."

I would continue with the next sentence, "The fear may [774] appear to be irrational," and it continues to talk about "Defendant's experience with the person applying the threat." I would not continue the sentence where it says, ". . . or other prior life circumstances of the Defendant," since that is going on beyond this particular relationship, and I don't think that that is relevant to what *Willis* was trying to establish—that you cannot go into that type of prior history because it is totally subjective.

I don't think it is necessary to put in the next sentence where it talks about, "It is not necessary, therefore, for there to be proof that the Defendant did not recklessly or negligently place herself in a relationship with the person making the threat." I don't think that whole sentence is necessary, because simply stated, element two of the offense itself says "The Defendant had not recklessly or negligently placed herself in a situation where it was probable that she would be forced to choose a particular criminal conduct with which she is charged. So it refers you back to the specific criminal conduct. So I don't think it is necessary to further explain that, because it is a fairly self-explanatory element. I don't think you need an additional explanation for that.

MR. JETT: Can I speak to that?

THE COURT: Yes.

MR. JETT: The reason I put that in there, Judge, is because I think it is anticipated, and I think based on the [775] testimony, there is going to be a tendency of the jury to think that she was reckless or negligent for being involved with this guy to begin with, and I think they need to be instructed to separate out essentially their opinions about her choices in men and her qualities as a mother versus whether she reasonably anticipated that her choices would put her in a situation where she would be perhaps required to engage in criminal conduct. I think those are two very different things, particularly based on the evidence where what we have is that, while there were problems in this relationship, and certainly there were some problems with Mr. Wright, or maybe we should call him Mr. Wrong, but be that as it may, I don't think until he pulled out the gun and started pointing it at her that she thought she would reasonably, you know, have dealings with guns. I know she did find the shotgun, but he took that away at her request.

I don't think there is anything in the evidence at all that would have caused her to reasonably believe he was going to

make her buy guns at some point until he came in with the gun, woke her up, and said, "We are going to go buy guns tomorrow."

So I think that the jury needs to be—It needs to be explained to them, they need to make a distinction between those two things. Because otherwise, I am afraid, based an the things the government did about talking about her relationships and the things she hadn't done, that they are just going to [776] say, "She is a bad mom, she doesn't take care of her kids, she has made bad decisions, she is put in bad circumstances; therefore, we are going to find her guilty," without focusing on whether or not she was negligent and getting herself involved in a gun sale.

THE COURT: Okay. All right. Any other objections?

MS. HEATH: I think you already mentioned in the second to the last sentence here about circumstances—

THE COURT: What I have written, "In determining whether or not you believe the Defendant had a reasonable legal alternative to violating the law, you must consider what an objectively reasonable person would have done in the same circumstances." That ties it back into a reasonableness, something similar.

Let's do this. I actually had made quite a few changes here, Let me go back and do it the way I think it needs to, because I think it has enough subjective components here that need to be eliminated, and I want to reword it just a little bit. Let me change that, and I will present that to you, and you can just object to that.

Any other objections from the Government?

MS. HEATH: No, Your Honor.

THE COURT: Mr. Jett, anything?

MR. JETT: Yes, sir.

THE COURT: Other than the duress right now?

[777] MR. JETT: Obviously I am going to object to those changes, but the only other objection I have is placing the burden of proof on the Defendant by a preponderance of the evidence to prove duress. I contend that the Defendant should have the burden of production, and then that the Government should be required to disprove beyond a reasonable doubt the duress.

And I understand what the Fifth Circuit has said, and I have cited to the Court authorities from other circuits. There is apparently a substantial split in the circuits as to who has the burden in this situation. And respectfully to the Fifth Circuit, I disagree with them, and ask the Court to submit a charge that would place the burden on the Government to disprove duress beyond a reasonable doubt, and as I have stated in my requested charge.

THE COURT: And I will, of course, deny that request. I can't overrule the Fifth Circuit. I am under their authority. And that is what they said is the law, so that is what we will include in the charge here.

Let me make this change and give you the opportunity to look at it on the duress, the changes I am going to make, and then we will take those objections, and we should be through, then.

(Brief Recess)

[778] THE COURT: If you will look on the first page of that duress, the fourth element, of course I have changed it like we discussed to what the Government proposed. I added that first sentence. That is new. "These requirements are addressed to the impact of a threat on a reasonable person." That is out of the *Willis* case, and that was not in the first proposed charge.

And then in the second sentence, the very last sentence of that page I added "objective" right before "situation," which is also out of *Willis*.

And the second page, it is harder to point out. I reordered some things, but added some language about the reasonableness, what I think is an objective test. And Ms. Heath, any objections to the duress?

MS. HEATH: Without waiving the Government's entire objection to the duress element—

THE COURT: You already have that one; yes.

MS. HEATH: Only two things. One, the first comment I had made about the fact that the charge does not tell the jury that they need to consider whether or not the Government has proved the elements of the offense first before they consider the duress defense.

THE COURT: That is what you have there, isn't it?

MS. HEATH: And then the second thing, in the element number four that you changed, it does say "he" instead of [779] "she," and that would be the only correction.

THE COURT: Yes, In the fourth element?

MS. HEATH: Yes.

MR. JETT: I would agree with that, Judge.

THE COURT: And I probably will add this language, then, as is here, probably right after the second sentence at the very top. "If you conclude that the Government has proved beyond a reasonable doubt that the Defendant committed the crime as charged, you must then consider whether the Defendant should nevertheless be found not guilty because her actions were justified by duress or coercion." That is what you are proposing?

MS. HEATH: I think it makes it clearer to the jury that it is not that they have to consider all of the charge at one time; that they need to address the elements of the offense first, and then if they determine the Government has proved its burden—

THE COURT: That is only when you go to duress, if they find her guilty otherwise. Do you have any objections to that?

MR. JETT: I don't.

THE COURT: Okay. I will put that in there right after the second sentence at the very beginning of the duress, Okay.

All right. And then we change the "he" to "she" on the [780] fourth element. Anything else, Ms. Heath?

MS. HEATH: That is all I have.

THE COURT: Mr. Jett?

MR. JETT: Nothing other than to reassert my prior objections.

THE COURT: You have those on the record.

MR. JETT: The only other thing I would—That is all on that matter, then.

THE COURT: On the duress?

MR. JETT: On that part of the duress. I would like to say one other thing about the burden of proof on it, that the Tenth Circuit's case on duress where it places a burden on the Government does rely on a U.S. Supreme Court case called *United States versus Bailey*, and I understand the Fifth Circuit is how it is, but T wanted to point that out to the Court and to the Circuit if they ever read this, and that there is some U.S. Supreme Court authority as well as other circuit authority that differs and would place the burden of proof on the Government on the duress issue.

THE COURT: All right. Any other objections, then?

MR. JETT: No, sir.

THE COURT: All right. With that we will just go ahead and call it a night. Come back in the morning about a quarter till. We will have the changes made on page 16, then. Adding that paragraph, that probably will affect 17 a little [781] bit.

But those are the only two changes we will make, adding that sentence and then changing the "he" to "she." Everything else will remain the same.

I won't take any new objections in the morning. If there is a typo or something that you catch, I will certainly hear that, but no new objections. This is it. So anything else?

MS. HEATH: Nothing else from the Government, Your Honor?

THE COURT: Mr. Jett, anything else?

MR. JETT: Nothing else.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed Nov. 20, 2003]

No. 3:03-CR-055-P

UNITED STATES OF AMERICA,
Plaintiff,

v.

KESHIA CHERIE ASHFORD DIXON,
Defendant.

COURT'S CHARGE TO THE JURY

MEMBERS OF THE JURY:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about burden of proof and how to judge the believability of witnesses. Then, I will give you some specific rules of law about this particular case; and finally, I will explain to you the procedures you should follow in your deliberations.

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors and they have the right to expect nothing less.

PRESUMPTION OF INNOCENCE—BURDEN OF PROOF—REASONABLE DOUBT

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, a defendant is presumed by the law to be innocent. The government has the burden of proving that a defendant is guilty beyond a reasonable doubt, and if it fails to do so, you must acquit that defendant.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning that defendant's guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the accused has been proved guilty beyond a reasonable doubt, say so. If your are not convinced, say so.

EVIDENCE—EXCLUDING ARGUMENT OF COUNSEL AND COMMENT OF COURT

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses, the exhibits and stipulated facts. Remember that any statements, objections or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case and, in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

Also, do not assume from anything I have done or said during the trial that I have any opinion concerning any of the issues in the case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

EVIDENCE—INFERENCES—DIRECT AND CIRCUMSTANTIAL

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and, you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is testimony of one who asserts actual knowledge of a fact, such

as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

SUMMARIES & CHARTS RECEIVED IN EVIDENCE

Certain charts and summaries have been received into evidence. Charts and summaries are valid only to the extent they accurately reflect the underlying supporting evidence. You should give them only such weight as you think they deserve.

CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved the guilt of each defendant beyond a reasonable doubt. In doing so, you must consider all the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness, including the defendant, and the weight to be given the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe what each person had to say and how important that testimony was. In making that decision I suggest that you ask yourself a few questions. Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the

considerations that will help you determine the accuracy of what each witness said.

In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point. Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say.

IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter or by evidence that, at some other time, the witness said or did something or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

CAUTION—PUNISHMENT

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

309

ON OR ABOUT

You will note that the indictment charges that the offense was committed on or about a specific date. The government does not have to prove that the crime was committed on that exact date, so long as the government proves beyond a reasonable doubt that the defendant committed the crime on a date reasonably near the date stated in the indictment.

EXPERT WITNESS

During the trial you heard the testimony of witnesses who were identified as expert witnesses. If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

CAUTION—CONSIDER ONLY CRIME CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of each crime charged. The defendant is not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case, except as you are otherwise instructed.

COUNT I

ACQUISITION OF A FIREARM BY A PERSON UNDER INDICTMENT (18 U.S.C. § 922(g)(1))

Title 18, United States Code, Sections 922(n) makes it a crime for a person under indictment for a crime for which he may be imprisoned for more than one year to acquire a firearm.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly received a firearm, as charged. The term "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term "firearm" also includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer, or destructive device;

Second: That when the defendant received the firearm, the defendant was under indictment for a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense; and

Third: That the receipt of the firearm was in or affecting commerce; that is, that before the defendant received the firearm, it had traveled at some time from one state to another.

1.37
"KNOWINGLY"—TO ACT

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.

1.39
INTERSTATE COMMERCE—DEFINED

Interstate commerce means commerce or travel between one state, territory or possession of the United States and another state, territory possession of the United States, including the District of Columbia.

COUNTS 2 - 9
FALSE STATEMENT TO FIREARMS DEALER
(18 U.S.C. § 922(a)(6))

Title 18, United States Code, Sections 922(a)(6) and 924(a)(2), make it a crime for anyone to make a false statement to a firearms dealer in order to buy a firearm.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant made a false statement while acquiring a firearm from a licensed dealer;

Second: That the defendant knew the statement was false; and

Third: That the statement was intended or was likely to deceive about a material fact, i.e., one which would affect the legality of the sale to the defendant.

The term "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term "firearm" also includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer, or destructive device.

A statement is "false or fictitious" if it was untrue when made and was then known to be untrue by the person making it.

A false statement is "likely to deceive" if the nature of the statement, considering all of the surrounding circumstances at the time it is made, is such that a reasonable person of ordinary prudence would have been actually deceived or misled.

DURESS—ELEMENTS

In this case, the defendant has offered evidence to show that at the time of the purchase of the firearms she was acting under duress or coercion. If a person commits an offense while under duress or coercion that person is not guilty. If you conclude that the government has proved beyond a reasonable doubt that the defendant committed the crime as charged, you must then consider whether the defendant should nevertheless be found "not guilty" because her actions were justified by duress or coercion.

The defendant has the burden of proof to establish the defense of duress by a preponderance of the evidence. Preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so.

To establish the defense of duress or coercion the defendant must prove each of the following by a preponderance of the evidence:

> *First*: That at the time of the conduct in question the defendant was under unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury to herself or to another;

Second: The defendant had not recklessly or negligently placed herself in a situation where it was probable that she would be forced to choose the particular criminal conduct with which she is charged;

Third: That the defendant had no reasonable legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; and

Fourth: A reasonable person would believe that by committing the criminal action she would directly avoid the threatened harm.

These requirements are addressed to the impact of a threat on a reasonable person. In determining whether the elements of duress are met you may take into account the objective situation in which the defendant was allegedly subjected to duress.

In order to show that the defendant's alleged illegal conduct was the result of duress or coercion, it must be shown that the defendant's fear is well-grounded, that is whether a reasonable person would have feared death or serious bodily injury to herself or to her children under the same circumstances. In deciding whether the defendant had a well-grounded fear, you may consider the immediate circumstances surrounding the purchase of the firearms as well as evidence concerning the defendant's past history with the person making the threats. A fear that seems irrational when viewed only in light of the immediate circumstances may be well-grounded if the defendant's experience with the person making the threats was such that she could reasonably anticipate harm to herself or to her children if she failed to comply.

With respect to the second element above, it is not necessary for there to be proof that the defendant did not recklessly or negligently place herself in a relationship with

the person or persons making the threat. It is necessary that there be proof that the defendant did not recklessly or negligently place herself in a situation in which it was probable she would be forced to unlawfully purchase the firearms alleged in the indictment.

In determining whether or not you believe the defendant had a reasonable legal alternative to violating the law, you must consider what an objectively reasonable person would have done in the same circumstances. Finally, you must find that the defendant reasonably believed that the alleged criminal conduct would avoid the threatened harm.

DUTY TO DELIBERATE—VERDICT FORM

To reach a verdict, all of you must agree. Your verdict must be unanimous as to each defendant and each count. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times, you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case, to decide whether the government has proved the defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson

who will help to guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the space provided for in each count of the indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the marshal. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the indictment, until after you have reached a unanimous verdict.

SIGNED this 20th day of November, 2003.

/s/ Jorge A. Solis
JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed Nov. 20, 2003]

No. 3:03-CR-055-P

UNITED STATES OF AMERICA,
Plaintiff,

v.

KESHIA CHERIE ASHFORD DIXON,
Defendant.

JURY VERDICT FORM

MEMBERS OF THE JURY:

COUNT 1:

We, the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 2:

We, the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 3:

We, the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 4:

We the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 5:

We the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 6:

We the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 7:

We the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 8:

We the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

COUNT 9:

We the jury, find the Defendant:

(√) GUILTY or ( ) NOT GUILTY of the offense charged.

SIGNED this 20th day of November, 2003.

/s/ [illegible]
Foreperson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Dallas Division

[Filed Feb. 23, 2004]

Case Number 3:03-CR-055-P(01)

UNITED STATES OF AMERICA,
Plaintiff,

v.

KESHIA CHERIE ASHFORD DIXON,
Defendant.

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, KESHIA CHERIE ASHFORD DIXON, was represented by J. Craig Jett, Esq. The United States was represented by Assistant U.S. Attorney Candy Heath.

The defendant was found guilty on Counts 1 through 9 by a jury verdict on November 20, 2003, after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18 U.S.C. § 922(n)	Acquisition of a Firearm While Under Indictment	January 2003	1
18 U.S.C. §§ 922(a)(6) & 924(a)(2)	False Statement to Purchase a Firearm	January 4, 2003	2, 3, and 4
18 U.S.C. §§ 922(a)(6) & 924(a)(2)	False Statement to Purchase a Firearm	January 11, 2003	5 through 9

As pronounced on February 18, 2004, the defendant is sentenced as provided in pages 1 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $900, for Counts 1 through 9, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Signed this the 23rd day of February, 2004.

/s/ Jorge A. Solis
JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of THIRTY-FOUR (34) MONTHS on each count to run concurrently with each other. This sentence is to be served consecutively to the sentence imposed in Case No. 3:01-CR-385-P(02). Defendant is to be given credit for time served after the completion of the sentence in Case No. 3:01-CR-385-P(02).

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

_____

_____

Defendant delievered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS on each count to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

☑ The defendant shall not possess a firearm, destructive device or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the U.S. Probation Officer.

The defendant shall refrain from incurring new credit charges or opening additional lines of credit without approval of the U.S. Probation Officer.

The defendant shall provide to the U.S. Probation Officer any requested financial information.

The defendant shall participate in a program approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing

for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (co-payment) at a rate of at least $10 per month.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 04-10250

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

KESHIA CHERIE ASHFORD DIXON,
Defendant-Appellant.

June 20, 2005

Appeal from the United States District Court
for the Northern District of Texas

Before REAVLEY, JOLLY and PRADO, *Circuit Judges*.

E. GRADY JOLLY, *Circuit Judge*:

This case may have added interest because the defendant introduced evidence concerning battered woman's syndrome as part of her duress defense. Otherwise, this appeal is unremarkable. The appellant, Keshia Cherie Ashford Dixon, was convicted of one count of receiving a firearm while under indictment and eight counts of making a false statement to purchase a firearm.[1] In appealing the conviction, she contends that the district court erred in: (1) refusing to permit expert testimony in support of her defense of duress; (2) excluding as hearsay an out-of-court statement made by her former boyfriend to an ATF agent; and (3) instructing the jury that

---

[1] *See* 18 U.S.C. §§ 922(n) and 922(a)(6).

she bore the burden of proving her defense of duress by a preponderance of the evidence. We find no reversible error, and thus AFFIRM.

I

Two Dallas gun shows are the situs of the crime. The relevant facts, occurring in January 2003, are largely undisputed. At both of the gun shows, Dixon purchased multiple firearms by providing false information to dealers. In particular, she provided an incorrect address and stated that she was not under indictment for a felony, when in fact she had been indicted for her role in a check cashing scheme. In each instance, the dealer ran Dixon's information through the National Instant Criminal Background Check System, received a "proceed" response, and sold Dixon the gun.

At trial, Dixon attempted to raise a defense of duress, claiming that she had been coerced into purchasing the guns by her boyfriend, Thomas Earl Wright, and an associate, Hookie Sanders. Both Wright and Sanders were convicted felons, so neither could purchase the guns directly. Each of the gun dealers testified that Dixon was accompanied by several men while at the gun shows, but that they did not seem to be controlling her purchases.

Dixon testified that she had been abused by Wright, who allegedly beat her on a regular basis and threatened her children. Her description of the relationship was largely corroborated by the testimony of her two daughters. Dixon further testified that she was afraid that, if she did not buy the guns for Wright, he would harm or even kill her or her daughters.

In support of her duress defense, Dixon attempted to introduce the testimony of Dr. Toby Myers, a domestic violence expert, regarding the reactions of battered women to their abusers. The court held that Dr. Myers's testimony addressed Dixon's subjective state of mind and was therefore inadmissible to show duress. Dixon also attempted to intro-

duce the testimony of Kelly Oates, an agent with the Bureau of Alcohol, Tobacco and Firearms, concerning an out-of-court statement by Wright that he gave Dixon $115 to purchase a gun for him. The district court excluded Oates's testimony as inadmissible hearsay.

The jury convicted Dixon on all nine counts.

II

On appeal, Dixon contends that the district court erred in three respects: (1) in refusing to admit Dr. Myers's expert testimony; (2) in excluding Wright's out-of-court statement as inadmissible hearsay; and (3) in giving a jury instruction that placed the burden of proving duress by a preponderance upon the defendant.

A

We first consider whether the district court erred in excluding Dr. Myers's testimony concerning the psychological effects of Wright's battery of Dixon. We review a district court's decision to exclude expert testimony only for abuse of discretion. *See, e.g., United States v. Krout*, 66 F.3d 1420, 1426 (5th Cir.1995).

Expert testimony is admissible if (1) it will assist the trier of fact to understand the evidence or to determine a fact in issue; (2) it is based on sufficient facts or data; (3) it is the product of reliable principles and methods; and (4) the witness has applied the principles and methods reliably to the facts of the case. FED.R.EVID. 702. In the case at bar, neither Dr. Myers's data nor her methodology have been challenged. The narrow question raised by Dixon is whether the district court abused its discretion in holding that Dr. Myers's testimony would not have assisted the jury in making a determination as to a material fact.

Dixon sought to introduce Dr. Myers's expert testimony in support of a defense of duress. Duress is an affirmative

defense that has been developed through the common law and adopted by the federal courts. *See United States v. Bailey*, 444 U.S. 394, 409-10, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980). To succeed on a duress defense, this court requires that the defendant show:

> 1. that [she] was under an unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury;
>
> 2. that [she] had not recklessly or negligently placed herself in a situation in which it was probable that she would be forced to choose the criminal conduct;
>
> 3. that [she] had no reasonable legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; and
>
> 4. that a direct causal relationship may be reasonably anticipated between the criminal action taken and the avoidance of the threatened harm.

United States v. Willis, 38 F.3d 170, 175 (5th Cir.1994); (quoting *United States v. Liu*, 960 F.2d 449, 453 (5th Cir.1992)). Whether apprehension is "well-grounded" turns on whether "a person of reasonable firmness in [the defendant's] situation would have been unable to resist" the threat. *Id.* (quoting AMERICAN LAW INSTITUTE, MODEL PENAL CODE § 2.09(1) (1985)). In short, the duress defense requires an objective inquiry into whether a defendant's conduct, although illegal, represented her only reasonable alternative to serious bodily injury or death.

1

Most of the expert testimony proffered in this case, like that in *Willis*, dealt with the defendant's subjective vulnerability to coercion. In *Willis*, we held that expert testimony that a defendant "suffers from the battered woman's syn-

drome" is "inherently subjective" and therefore inadmissible to support a defense of duress. *Id.* at 175, 177. In the case at bar, although Myers carefully avoided using the term "battered woman's syndrome", she nonetheless explained that Dixon was "more vulnerable because she had lost her job" and that Dixon "didn't think [calling the police] would do any good". Dr. Myers concluded that, as a result of Wright's threats and repeated battery, Dixon believed "in her heart and mind [that] she didn't have a choice" as to whether to buy the guns. In short, this testimony clearly focuses on Dr. Myers's opinions as to Dixon's individual state of mind.

To the extent that Dr. Myers's proffered testimony described Dixon's subjective perceptions of danger, it was not relevant to the inquiry at hand—that is, to whether such perceptions were "well-grounded" or objectively reasonable under the circumstances. As such, it could not have "assist[ed] the trier of fact" in making any determination of material fact. *See* FED.R.EVID. 702. Thus, we hold that the district court did not err in excluding this portion of Dr. Myers's testimony.[2]

---

[2] Furthermore, Dr. Myers's assertion that Dixon's fears were reasonable does not redeem her testimony. Whether a defendant's apprehension of harm is reasonable under the circumstances is ultimately a question for the jury. Although it is certainly possible that expert testimony might shed light on the reasonableness of a given type of conduct by describing typical reactions to unusual circumstances, such was not the case here. Instead, at the prompting of counsel, Dr. Myers offered the wholly conclusory assertions (1) that Dixon's fear of Wright was "well grounded" and (2) that her decision not to leave Wright was not "reckless or negligent".

These statements represent a transparent strategy to distinguish Dr. Myers's testimony from that which was excluded in *Willis* by inserting brief, perfunctory "objective" characterizations into testimony that otherwise focuses exclusively on the defendant's subjective perceptions. If the rule announced in *Willis*—i.e., that expert testimony as to a defendant's subjective beliefs is inadmissible to show duress—were so easily swept aside, it would be meaningless.

Our analysis does not end here, however. Dixon contends that Dr. Myers's proffer did not focus exclusively on subjective perceptions. Rather, Dixon argues, the proffer included a significant amount of "'objective' testimony that would show that [Dixon's] fear . . . was well-grounded in her history and experience with Wright". Although it is not altogether clear to us what Dixon means by "objective testimony", the record suggests that the term refers to testimony by Dr. Myers as to the facts of Dixon's relationship with Wright.[3]

Such testimony, Dixon contends, would be based upon, *inter alia*, "interviews with Dixon's mother and daughters, statements from Wright and Sanders to the government" and "the testimony of . . . Jocelyn Dixon". In short, it would be inadmissible hearsay. *See* FED R. EVID. 802-804. Dixon points out that the facts upon which an expert opinion are based "need not be admissible in evidence in order for the opinion or inference to be admitted". FED.R.EVID. 703; *see also United States v. Williams*, 447 F.2d 1285, 1290 (5th Cir.1971) (en banc). The inverse of this statement, however, is not true. Where, as here, an expert's opinion testimony is inadmissible, the hearsay upon which that opinion is based is also inadmissible. Were it otherwise, designation as an "expert" would permit any such witness—regardless of her

[3] Another type of expert testimony that may be termed "objective" is that which describes the typical patterns, circumstances and effects of battery within an abusive relationship without attempting to draw any conclusions therefrom as to the subjective perceptions of a particular defendant. Since *Willis* was decided, various courts have recognized a distinction between such generalized testimony and "subjective" expert testimony that effectively diagnoses a particular defendant as suffering from battered woman's syndrome. *See, e.g., State v. Grecinger*, 569 N.W.2d 189, 196-97 (Minn.1997); *Scugoza v. State*, 949 S.W.2d 360, 363 (Tex.App.San Antonio 1997); *State v. Stringer*, 897 P.2d 1063, 1069 (Mont.1995).

qualification or the relevance of her testimony—to escape the ambit of the hearsay rules.

Thus, in view of the inadmissibility of Dr. Myers's opinion testimony, she is not a competent witness to testify as to facts of Dixon's relationship with Wright based solely on what others told her. We therefore hold that the district court did not abuse its discretion in excluding such testimony.

B

Dixon next argues that the district court erred in excluding, as inadmissible hearsay, potentially inculpatory statements made by Wright to Agent Oates. Shortly after his arrest, Wright told Oates that he and an associate had given Dixon $115 to purchase a .380 semiautomatic pistol for them, and had done so because they were convicted felons and could not buy the guns themselves. Dixon acknowledges that Oates's testimony concerning the statement is hearsay, but contends that it is nonetheless admissible as a statement against interest. *See* FED.R.EVID. 804(b)(3).

The hearsay exception for statements against interest applies only where (1) the declarant is unavailable; (2) the statement tends to subject the defendant to criminal liability, such that a reasonable person in his position would not have made the statement unless he believed it to be true; and (3) the statement is corroborated by circumstances clearly indicating its trustworthiness. *See United States v. Sarmiento-Perez*, 633 F.2d 1092, 1101 (5th Cir.1981). The district court assumed that Wright would refuse to testify, given the potentially incriminating nature of his statement. As such, the admissibility of Oates's hearsay testimony turned exclusively on whether Wright's admission was corroborated by circumstances indicating its trustworthiness.

We will uphold a determination as to the trustworthiness of an out-of-court statement "unless it is clearly erroneous". *United States v. Vega*, 221 F.3d 789, 803-04 (5th Cir.2000).

In this case, the district court based its decision to exclude Oates's testimony, in part, on a major inconsistency between Wright's account of events and Dixon's. Although Wright admitted in his statement to Oates that he gave Dixon money to purchase a gun for him, he also asserted that he went to the gun shows "at Dixon's request" to "show her which ones to purchase because she didn't know anything about guns". This directly contradicts Dixon's account, in which Wright and Sanders physically coerced her into going to the gun show with them.

The discrepancy between the two accounts goes to the very heart of the duress defense—that is, whether Dixon bought the guns under threat of violence. Thus, while Dixon contended that she acted under duress, she sought to introduce a state-ment that indicated she acted willingly and voluntarily. Faced with such a fundamental inconsistency, the district court did not err in excluding the statement.

C

Finally, Dixon contends that the district court erred in instructing the jury that she, as the defendant, bore the burden of proving her duress defense by a preponderance of evidence. Our circuit's law is clear on this point: "Since a justification defense is an affirmative defense, the burden of proof is on the defendant. To succeed, the defendant must prove each element of the defense by a preponderance of the evidence." *Willis*, 38 F.3d at 179. As such, Dixon's contention is meritless.

III

For the foregoing reasons, the conviction is AFFIRMED.